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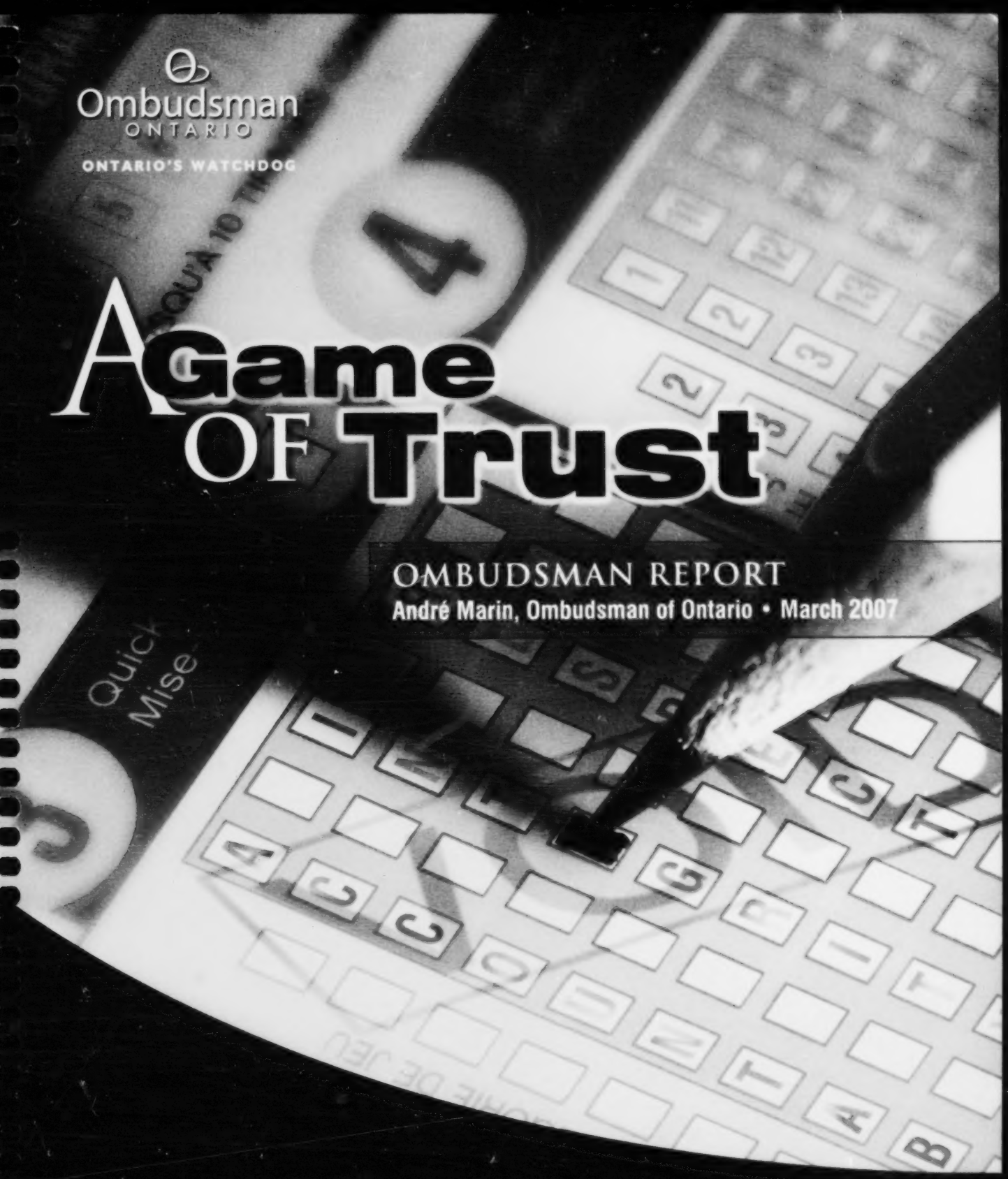
A Game of Trust

OMBUDSMAN REPORT

André Marin, Ombudsman of Ontario • March 2007



Investigation into the Ontario Lottery and Gaming Corporation's Protection of the Public from Fraud and Theft

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Investigation into the Ontario Lottery and Gaming Corporation's Protection of the Public from Fraud and Theft

"A Game of Trust"

André Marin
Ombudsman of Ontario

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Executive Summary

1 The Province of Ontario has become addicted to gambling revenues. In the 2004-2005 fiscal year, the Ontario Lottery and Gaming Corporation (the "OLG"), the Crown agency that administers government gaming operations, generated nearly $6 billion in overall revenue, close to $2.3 billion of which came from lotteries alone. In 2006, the government lottery business grossed almost $2.4 billion. Tens of thousands of private retail workers – the frontline faces of this lottery juggernaut – feed tickets into terminals in return for millions in cash each year. Without question, government lotteries are big business in Ontario and the Province has come to rely on the money generated.

2 I make no moral judgment about all of this. After all, it is common for Western governments to become dependent on gaming revenue to help fund important government programs. In Ontario, as elsewhere, the considerable profits earned are used for public benefit – to fund a variety of worthy programs, from sports, recreational and cultural activities to health care and hospitals, from environmental and social programs to grants to charitable organizations. By getting into the gaming business, the Province has not only acquired a huge pool of money, it has taken charge of an activity that remains criminal if undertaken privately because of its inherent risks of corruption and abuse of the vulnerable. It has done so in an effort to ensure that funds yielded do not profit criminals but instead assist the people of this province.

3 It is fitting that the OLG's three core values are "integrity, respect and accountability," because it is those characteristics that best distinguish criminal activity from socially responsible entertainment. For the same reason, it is disturbing when those core values are given inadequate focus or even forsaken because of a corporate culture that places profits before responsibility. That is what happened in the case of Bob Edmonds, and no doubt to an untold number of others. It is why, based on the results of this investigation, I am firmly convinced that the OLG cannot continue to go it alone. Let it sell lottery tickets because it does it so well, but get it out of the fraud prevention business at which it has proved itself so inept – and have an independent agent regulate lotteries instead.

4 On Oct. 25, 2006, the CBC broke the shameful story of the Corporation's "insider win" problem on its television documentary program, *the fifth estate*. The program, *Luck of the Draw*, told the story of Bob Edmonds, a senior who was cheated of his winnings by a lottery ticket retailer, only to have to fight a three-year battle with the Corporation after he revealed this wrong.

5 The Corporation knew well from past experience that it was easy for its retailers to steal winning tickets. Only a month before Bob Edmonds' complaint, it had lost a court case because, the presiding judge warned, it owed a "duty of care" to protect the ticket-buying public from unscrupulous retailers. Yet despite this, the Corporation's prevailing instinct was to protect its retail business. Its reaction was not to come to Bob Edmonds' aid. Nor did it even take steps to freeze the retailer's assets. Instead, its strategy was to freeze out Mr. Edmonds. As it wrote to him on Jan. 25, 2002: "Dear Mr. Edmonds… [The Corporation] is not responsible for any alleged actions of the retailer." The Corporation simply chose to ignore its own inconvenient truth.

6 The OLG has gone out of its way to deny an agency relationship with its retailers, even though it has them stand as its point-of-sale contact with the public. Yet here it was, telling Mr. Edmonds, "Take it up with the retailer. This is not about us" – and ultimately burning up close to half a million dollars in legal fees over three years, trying to tell a 78-year-old man he should have taken care of himself. Even then, the Corporation was not done with him. In the summer of 2006, it spent nearly $200,000 more fighting Mr. Edmonds in court, trying to keep him quiet. But as justice would have it, the silence was broken when the *fifth estate* story aired.

7 This compelling story, pitting an elderly David against a clumsy and unfeeling Goliath of a corporation, captured public attention – including my own. It made us all wonder if the Corporation was not living up to its core values of "integrity, respect and accountability" and operating a system that could not be trusted. It was obvious to me that if this were true, two serious problems could arise. First, lotteries are a game of trust and without trust, players will simply take their marbles and go home, depriving the province of important revenue. Second, the loss of trust I was apprehending appeared to have arisen from a lack of due care and attention to the vulnerability of the very people the OLG was meant to protect – the gaming public. This raised the spectre of many more potential victims like Bob Edmonds. I therefore undertook this case as my first "own motion" investigation.

8 In the immediate aftermath of the CBC program, the OLG responded by trying to downplay its revelations. *The fifth estate* had presented sobering information about the potential size of the insider win problem, including an interview with a statistics expert who said the odds of insiders winning jackpots at the rate demonstrated by the Corporation's own figures were "one in a trillion trillion trillion trillion." The OLG hired its own expert to dispute this, saying such firm conclusions were impossible.

9 For my Office's investigation, we also retained an expert, who was ultimately frustrated by the lack of reliable information about everything from the number of retail employees to the number of insider wins and the relative amounts spent by insiders as opposed to consumers. To me, this is not a vindication of the Corporation but an indictment of its lack of reliable records, and it only underlines the burning need for the OLG to take steps to secure the public's trust.

10 Without question, insiders have won big over the years. The Corporation confirms that from 1999 to November 2006, at least 78 retail owners and 131 retail employees have won major lottery prizes, and there could be more. Retailers have no doubt also won thousands of smaller prizes. Certainly many of these wins are legitimate, but it is equally clear that millions of dollars have been paid out in what are dishonest claims. In 2003 and 2004, the OLG identified five suspicious major wins by "insiders" – all of which are detailed in this report – yet only one of the claimants was denied a prize. Internal auditors also reviewed the claims records of 31 insider winners in 2005 – three with prizes over $1 million.

11 We learned during our investigation that there was enough information within the Corporation about insider fraud to cause a meeting to be held in August 2004 on the subject, and we found an executive brief that identified five outstanding win claims that were suspicious. The Chief Executive Officer's response to one of his officials' concerns about all of this was discouraging: "Sometimes you hold your nose."

12 Not only did the OLG know there was a problem with insider fraud, it was fully aware that the measures it put in place to guard against retailer fraud were woefully inadequate. Its "Insider Win Policy" did not kick in unless the win was a "major" one of $50,000 or more and revelled in ambiguity, failing to give a crisp definition of "insiders." When it did kick in, investigations under the policy were at times more friendly than purposeful, with prize officials dropping hints to help insiders prove their case rather than subjecting them to serious questioning. Meanwhile, the consumer complaint process, a frontline source for tips about dishonest retailers and worrisome transactions, was inept.

13 To be fair, although some tighter security measures were taken before the fall of 2006, it remains incontrovertible that the OLG was shirking its responsibility in protecting against fraudulent insider wins. The August 2004 meeting about the insider win problem backfired when officials chose to throw in the towel and abandon investigations altogether, save in exceptional cases. A year later, a corporate manager even suggested the Insider Win Policy be changed to exclude retailers, and that the Corporation move to a system under which it would stop asking who purchased a ticket and simply pay whoever walked in with it, even if

it was a retailer. While the OLG paused before going quite this far, a new insider win policy focusing only on those with a direct ability to manipulate the ticket system was set to be implemented in May of 2006. But then the CBC started asking questions about the Edmonds case. That put the kibosh on the Corporation's plans to reduce scrutiny of insider wins – the optics were just too terrible.

14 All of this raises key questions. Given that the Corporation was well aware of its customers' vulnerability to retailer fraud, why would it have failed to implement any effective prevention systems? And why would it be ready to make those systems weaker? The answer is as simple as it is distressing. Prior to October 2006, there was an inappropriate corporate culture within the OLG; in a phrase, the OLG had become fixated on profit rather than public service. It had come to define itself by its role as a cash cow. As the Vice-President, Sales and Service told us, his job is to celebrate big wins and get them on the front page of the newspaper. Profits are maximized by good news stories, not by publicity relating to retailer corruption.

15 At the same time, there is no doubt that the Corporation has coddled its retailers. If it had resisted insider win claims that fail the "sniff test" with half the resolve it used to fight poor Mr. Edmonds, it would not only have saved public money, it would have built the public trust it now lacks. Why the confusion of loyalties? The only explanation that comes to mind for the OLG's verifiable reticence to clamp down on retailer fraud is that those retailers are, essentially, its own people – and among its best customers to boot.

16 There is something deeply distressing when a public agent such as the OLG begins to use a "buyer beware" policy against the very people whose interests it was created to protect. And it is equally alarming when it coddles those who make customers vulnerable to theft and fraud. I am left in no doubt that prior to October 2006, the OLG lost sight of the fact that it is a guardian of the public trust first, and a profit centre second.

17 What changed things was the public exposure of what the Corporation had done to Mr. Edmonds and to the public at large. Its Chief Executive Officer spoke candidly to our investigators about the impact of the *fifth estate* program and the furor it unleashed: "To say that we've had sensitivity training would be an understatement." Indeed, the TV story's effect on the Corporation was so profound and forceful that we were told some staff had taken to referring to the day it aired as "10/25" – their own day of infamy. The OLG also undertook some important initiatives, which are outlined in this report. Among other things, it has so far beefed up its process of reviewing insider wins, launched a review of its

investigative procedures and, under direction of the Minister of Public Infrastructure and Renewal, retained the independent consulting firm KPMG to conduct a review of all its lottery-related operations and practices. It has implemented a number of KMPG's recommendations to date, including a public education campaign to alert customers to such things as the importance of signing their tickets before handing them to lottery retailers.

18 Without question, these initiatives are to be applauded. While the Corporation has certainly been proactive in seeking solutions, however, there are disturbing signs that the culture that led to the difficulties in the first place is not gone. It was not conscience or self-criticism that smartened the OLG up – it was a public relations nightmare, played out on the public airwaves despite its best efforts at suppression. A profound cultural shift has yet to occur, as the Corporation demonstrated in its all-out defensive reaction against *the fifth estate's* statistics. This is not some private company responding to a potential profit-draining scandal. This is a Crown corporation created to protect and serve the public, which knew it had a problem. It should have apologized, not turtled.

19 Our investigation showed that the OLG has yet really to appreciate that its highest obligation is not to the retailers, but to the customers who are left vulnerable. We were left with the distinct impression that the OLG is in a state of denial when it comes to its retail partners, and that it exhibits a marked reluctance to take a hard stand. It is its relationship with its retailers that is the Corporation's fatal flaw – the thing that will prevent it from being effective, notwithstanding the important and praiseworthy measures taken to date. That is why I am recommending reforms that go well beyond those that are already in the works.

20 Some might argue that the simplest solution would be to ban lottery retailers from playing, period. I am not prepared to go this far, for three reasons: First, only one jurisdiction that we looked at – Argentina – has gone this route. Second, I am persuaded that there is some unfairness in preventing thousands of retailers and their employees from participating in an activity that can be enjoyed by everyone else. Third, I believe that if the recommendations made in this report are taken up, the Ontario lottery industry will be made safe enough to preserve public trust, in a way that minimizes the risks.

21 I make 23 recommendations in this report. These include calling on the Corporation to implement and publicize KPMG's recommendations. Among other things, I recommend better training for retailers and stricter enforcement measures, including zero-tolerance policies for dishonesty. The OLG and its retailers must come to appreciate that vending lottery tickets is an important responsibility and a privilege, not a right. I am recommending that the Insider

Win Policy be clarified and strengthened, and that the Government of Ontario set up an adjudicative process to deal with prize claim disputes and suspicious claims. I am also recommending measures to help the OLG improve its handling of complaints.

22 In addition, I am proposing three new initiatives: First, the Corporation should make a public statement confirming its commitment to the citizens of Ontario by taking all reasonable steps to ensure the integrity and honesty of the retailers who serve the lottery system. Second, I am recommending that lottery retailers be subject to criminal record checks and that they lose their privilege to sell lottery products if they commit relevant criminal or provincial offences.

23 Third, and of most importance, I am recommending that much of this happen within an independent regulatory scheme, administered by a body independent of the OLG. My investigation has shown that the OLG is hopelessly conflicted – it cannot be expected both to increase lottery profits by working with retailers, while at the same time acting as the sole body responsible for regulation and policy enforcement to keep retailers honest. This independent regulator, whether it is the Alcohol and Gaming Commission of Ontario – an existing body that already deals with gaming in Ontario, including the OLG's casino and slot-machine operations – or some new or other body, should ensure that retailers are fit to carry out this public trust and that they adhere to a code of conduct. I envisage an agency with broad investigative and remedial powers that would proactively conduct random integrity tests on retailers and ensure any insider wins are legitimate.

24 As this report demonstrates, the lottery enterprise is too fraught with the risk of exploitation and is too dependent on public trust to be treated as purely a business enterprise. The OLG should be freed up to do what it does well – generating billions of dollars annually from the lottery business – and an independent regulator should be called upon to preserve "integrity, respect and accountability." Perhaps the OLG could surprise us all by truly changing its culture, but there is too much at stake to leave such an unlikely thing to chance.

Overview

25 Government-run lotteries have been around since 205 to 187 B.C., when the Chinese created keno during the Han Dynasty. Through the centuries, governments around the world have used lotteries to raise much-needed public funds, to support their armies, construct public buildings and structures and replenish government coffers. Lotteries are a popular fundraising method because they harness the imagination, hopes and dreams of citizens. They provide both inexpensive entertainment and a dependable source of government revenue.

26 Provincially-run lotteries in Canada are a multi-billion-dollar industry. However, their success is dependent on one key factor: Trust. Citizens will only buy into the dream if they are confident that they stand a chance, no matter how infinitesimal, of winning the coveted prize. When that underlying trust is shaken, the government funding structure based on lottery revenue is placed at risk. That affects not only lottery participants, but everyone.

27 In Ontario, lotteries are conducted through the Crown agency known as the Ontario Lottery and Gaming Corporation. This public corporation's average gross revenue from lotteries is a staggering $2.3 billion a year, which is used to fund a multitude of public programs. On Oct. 25, 2006, the Corporation's operations were catapulted into the public eye when the Canadian Broadcasting Corporation's *the fifth estate* ran a documentary entitled *Luck of the Draw*, which sparked intense and widespread concern about the integrity of lottery schemes, particularly in Ontario. The show focused on the story of Bob Edmonds, who told of how he had been cheated out of a $250,000 lottery prize by a dishonest retailer, and about his battle with the OLG to establish his rightful ownership of the winning ticket.

28 The Corporation has characterized what happened to Mr. Edmonds as an "isolated incident," and since Oct. 25, 2006, it has spent considerable time and resources trying to rehabilitate its reputation. What my investigation has revealed, however, is that the Corporation has been aware for years of the potential for fraud and theft by retailers responsible for selling and validating its lottery products. Yet it failed to take swift, necessary and proactive steps to fulfill its responsibility to Ontario's consumers.

29 Since Oct. 25, 2006, the Ontario Lottery and Gaming Corporation has taken some baby steps towards regaining the trust of Ontario's citizens, but this is only a beginning. In this report, I make a number of recommendations directed at improving the OLG's security measures and complaint processes, but I have also made recommendations to address the gaping regulatory void when it comes to

lottery retailers in Ontario. I believe that in order to rebuild trust in the lottery system and to restore the public's faith in lottery retailers, external regulation of this significant area is required.

Investigative Process

30 News of the *fifth estate* exposé fuelled widespread concern about the integrity of the lottery system. This intensified after the program was broadcast. Parliamentarians of all stripes expressed concern in the Legislative Assembly. Amidst this maelstrom, on Oct. 26, 2006, I launched my first "own motion" investigation into how the Ontario Lottery and Gaming Corporation protects the public from theft or fraud related to winning lottery tickets – and how it responds to complaints about potential theft or fraud involving lottery winnings. At that time, I noted that Ontarians avail themselves of the Corporation's lotteries because they trust that it is there to ensure they are administered fairly and that safeguards exist to prevent theft or fraud by insiders. I also noted that Ontarians have the right to trust that any complaints of unfair practices which are brought forward to the OLG will be diligently and thoroughly investigated and any incidents of wrongdoing will be acted upon.

31 The Special Ombudsman Response Team carried out the investigation. We received more than 400 complaints from members of the public after the probe was announced. In addition to Mr. Edmonds, 25 complainants were interviewed in detail, either face-to-face or by telephone.

32 The investigative team formally interviewed 28 OLG staff and conducted telephone interviews with seven others. We also carried out a number of other interviews with interested parties, including former Corporation staff, lottery retailers, and the Ontario Convenience Store Association. In addition, we contacted a number of lottery operators in other jurisdictions.

33 An independent statistician from the University of Western Ontario was retained to review the material on our behalf and provide an expert opinion as to whether or not there was a disproportionate number of insider wins.

34 We reviewed more than 53 banker's boxes of materials provided by the Ontario Lottery and Gaming Corporation, comprising thousands of pages. We received exemplary co-operation from the Corporation.

The OLG: A Winning Enterprise

35 Provincially-run lotteries have been around in Ontario for over 30 years. The Ontario Lottery Corporation was created in 1975, and merged with the Ontario Casino Corporation (created in 1994) in April 2000, to form the Ontario Lottery and Gaming Corporation. The Corporation is established under the *Ontario Lottery and Gaming Corporation Act, 1999*. It is a Crown agency run by a five-member board of part-time directors appointed by the Lieutenant Governor in Council. The board reports to the Minister of Public Infrastructure and Renewal. The Corporation is responsible for the province's lotteries, charity and aboriginal casinos, commercial casinos, and slot machines at racetracks.

36 Lotteries and gaming are big business in Ontario. The Corporation is an extensive organization, employing about 8,000 people directly, providing employment indirectly to about 12,000 people working for casino operators, and supporting roughly 11,000 independent lottery retailers. In the fiscal year ending March 31, 2005, it generated nearly $6 billion in overall revenue, $2.3 billion of that from lotteries; in the subsequent fiscal year, gross lottery revenue was just under $2.4 billion.

37 Money generated by lotteries, after payment of prizes and operating expenses, is used to fund a broad variety of programs for the benefit of Ontario's citizens, from sports, recreational and cultural activities and facilities, to health care, including the operation of hospitals.[1] Profits generated by the Corporation are also used by the Ontario Trillium Foundation to fund social programs through grants to promote the arts, culture, recreation, sports, the environment and social services. The Province has guaranteed $100 million annually to support charitable groups through the Foundation. To ensure a steady stream of government funding, the Corporation actively markets its products, engaging in slick, feel-good ad campaigns celebrating big wins. It markets a variety of products to retailers as well as consumers. The Corporation is in the business of selling dreams. With its motto "Everyday Possibilities," it persuades millions of Ontarians annually to buy into the vision of becoming a millionaire.

The Rules of the Game

38 Currently, the Ontario Lottery and Gaming Corporation operates 10 "online" lotteries – in which customers pick numbers that are fed into an OLG computer at

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[1] See s.14(1) – (3), *Ontario Lottery and Gaming Corporation Act, 1999*. For payments of casino revenue see s. 14(4)(5).

the time they buy their ticket, or have the computer pick their numbers for them. It also has more than 20 "instant" or "scratch-and-win" games and three sports games. Game rules are now available from the Corporation's website. Game rules for two popular lotteries, Lotto 6/49 and Super 7, are established by the Interprovincial Lottery Corporation, of which the OLG is a member along with the other regional marketing organizations that represent all Canadian lottery corporations. Revenues from Interprovincial lottery games are returned to each participating province in proportion to generated sales. Regulation 198/00 under the *Ontario Lottery and Gaming Corporation Act, 1999*, governs the Corporation's lottery schemes. It is a condition of participating in a lottery scheme that the participant agrees to be bound by the game rules (s.9(2), O.Reg. 198/00). Winners must satisfy the Corporation's rules before they may collect prizes. The OLG's rules typically provide that prize claimants must warrant that they are the "lawful bearers" of the tickets they present for redemption. Lottery tickets are sold by retail outlets throughout the province.

39 Approved retailers sell and validate tickets through computer terminals provided by the Corporation. Individual retailers may redeem lottery prizes onsite of up to $990 in value.[2] Prizes over this amount must be claimed directly through the Corporation. For prizes of up to $50,000, a claimant can mail the ticket to the Corporation for redemption, which is handled through the Corporation's Sault Ste. Marie Prize Office. Winners of prizes of $50,000 or greater must generally collect their winnings in person at the Toronto Prize Office. Recently, some casinos and racetrack slot venues have been authorized to pay out lottery prizes up to a value of $250,000, although processing for winners is still through the Toronto Prize Office.

The retail relationship

40 The OLG exists to generate revenue for the province, but it is dependent on about 11,000 private retailers, ranging from large drug stores and supermarkets to small convenience stores and kiosks, to actually sell its products. It is a symbiotic relationship. Retailers profit from the sale of the Corporation's products. In the case of smaller store owners, lottery sales can make or break a business. Retailers earn commission and bonuses on sales and validations. From April 1, 2005 to March 31, 2006, Ontario retailers shared more than $165 million in sales and redemption commissions. The Corporation assiduously fosters its relationship with retailers. Its sales staff initially spend a few hours training new retailers on its procedures, and retailers are in turn responsible for training their staff.

41 Retailers who operate the Corporation's online ticket terminals are visited each month by members of its 80-person sales force. Those retailers deemed to have high sales opportunities will be visited more often than those considered to have low potential. Another 75 staff in the Corporation's Customer Excellence Centre are available for telephone contact with retailers on a daily basis. The Corporation also undertakes retailer satisfaction surveys to gauge how it is meeting the needs of this important constituency. The Corporation's sales force markets its products, but also has a role in ensuring retailer compliance with the Corporation's requirements. However, the compliance role does not sit well with the Corporation. Retailers are its allies and, in fact, some of its most valued customers.

42 One of the slogans the Corporation is fond of using is: "We honour your trust, and we're committed to earning it." However, when it comes to choosing between the interests of retailers and those of consumers, the Corporation has displayed a self-serving habit of favouring retailers at the expense of the public.

And the Winner is?

Missed Signals: Paul Rutherford's story

43 Paul Rutherford of London, Ontario, learned the hard way that not all lottery retailers could be trusted. In 1993, Mr. Rutherford shared a ticket with a retailer for a July 17, 1993 Lottario draw. Their numbers came up and they won a jackpot of over $400,000. There was only one hitch – the retailer presented the ticket to the Corporation claiming that she was the sole owner.

44 Unfortunately, by the time Mr. Rutherford was alerted to the retailer's deception and contacted the Corporation to complain, it had already paid out the prize money. Three years later, a court confirmed Mr. Rutherford's entitlement to half the winnings, but by then it was too late. While he had recovered some money from the retailer, she had filed for bankruptcy. Mr. Rutherford then looked to the Corporation, claiming that its failure to properly investigate the retailer's claim to the prize money – and to pursue her once it had notice of his claim – had resulted in his financial loss. The Corporation's position was that it was impartial when it came to ownership disputes and that there was nothing it could do. Ontario's Superior Court of Justice disagreed.

45 In *Rutherford v. Ontario Lottery Corporation*,[3] the court determined that the Corporation had a duty to act as a "prudent payor," and that it had failed to fulfill that duty. The judge found that when the ticket was presented, there were a number of warning flags that should have signaled the need for further inquiry. He was also critical of the fact that, once alerted to the fraud, the Corporation had taken no steps to recover any of the funds that it had paid out to the retailer, under the standard indemnity agreement she had signed in exchange for her prize money. The judge found the Corporation had been negligent in failing to take steps to recover Mr. Rutherford's portion of the winnings. While Mr. Rutherford was considered to be partially to blame for not ensuring that his name was on the ticket and for failing to follow up with the Corporation sooner, it held the Corporation responsible for paying the difference between what he had won and what he was eventually able to recover from the retailer. He was also awarded reimbursement of other costs related to the proceedings.

46 The Rutherford case offered the Corporation the perfect opportunity to do the right thing by consumers – to acknowledge its responsibility to the public, and take effective steps to address security concerns around retailer fraud and theft. However, rather than embracing its legal duty, the Corporation simply ignored it.

Fighting to be Heard: Bob Edmonds' story

47 Bob Edmonds, like so many other Ontarians, enjoyed playing lotteries, routinely playing a set of favourite numbers that had special significance for him. At the age of 78, he regularly played Lotto 6/49, Ontario 49 and Lotto Super 7. On July 5, 2001, Mr. Edmonds purchased a Super 7 ticket from his local variety store in Coboconk, playing his usual numbers. He validated the ticket on July 13, 2001, at a store in Fenelon Falls, winning a free ticket, and adding a dollar to play the Encore bonus game. On July 27, 2001, Mr. Edmonds went back to the Coboconk store to check if any of his tickets, including the free one he had won two weeks earlier, had brought him any luck. When the clerk on duty validated his tickets at the lottery terminal, he heard it play its familiar jingle twice, signifying that he had won two prizes.

48 The clerk, however, handed him only a free ticket. He was surprised, but with small-town trust and polite reserve, he thanked her and walked away. The woman and her husband, who owned the store, were good friends of his. Sadly, Mr. Edmonds soon learned that his trust, in those retailers and in Ontario's lottery

[3] *Rutherford v. Ontario Lottery Corporation*, (unreported July 17, 2001, Ontario Superior Court of Justice).

system as a whole, had been betrayed. Unbeknownst to him, on July 30, 2001, the clerk and her husband went to the Ontario Lottery and Gaming Corporation's Toronto Prize office to redeem a $250,000 Lotto Super 7 Encore jackpot.

49 In accordance with its standard practice, the Corporation asked the couple a series of questions. The clerk identified herself as an employee of a variety store on the prize claim form, which alerted the Corporation to the fact that she should be considered under its Insider Win Policy. She was unaware of this policy, and upon learning of it, her story began to change. She claimed that in fact, she wasn't really an employee, but helped out in her husband's store from time to time. This contradicted the Corporation's own records, which confirmed she was listed as the store's contact person. The clerk was also very short on facts. She couldn't provide any clear information as to where or when she had purchased the winning ticket. The Prize Office staff, as was their custom, tried to "lead" the retailer to the right location, which they knew to be Fenelon Falls. They even hinted to her that this was the location, but she was still unable to state with any certainty when or where the ticket was obtained. The Prize Office staff decided to give her an opportunity to think some more about the purchase and validation details and provide them with selection forms showing the numbers she had played on tickets she had played in the past. When they contacted the clerk the next day, she provided numbers that she regularly played – but none of them were those that had been used to generate the lucky free ticket.

50 The Corporation was not completely gullible. The store clerk's story began to cause it some concerns. It knew that the numbers that had generated the winning free ticket were played regularly, but inexplicably this claimant could not recall playing them, nor did she describe any of them as significant numbers. It was suggested in an internal record that she might be cashing the ticket "on behalf of a customer." Accordingly, on Aug. 2, 2001, an investigator was dispatched to the Coboconk store to conduct an interview with the clerk and her husband. As she could still not recall any details about how she obtained the ticket, the investigator advised her that the winning ticket had been a free play, generated from a ticket with numbers that had been manually selected (as opposed to being randomly picked by the computer), and that these numbers had appeared on other lottery tickets generated from her store.

51 She was again asked whether she played any numbers regularly. She provided several selection slips, but none of them carried the lucky combination that had been used to generate the winning ticket. Then, suddenly, in a move worthy of a magician, the clerk retrieved an old ticket from her purse. Lo and behold, it contained the elusive winning numbers! She then explained that these were

numbers that her late father had played, she didn't know their meaning, and she herself only played them casually.

52 The clerk's story is in sharp contrast to that told by Mr. Edmonds. According to him, the day before the investigator's visit, on Aug. 1, 2001, the store owner and his wife had contacted him and persuaded him to provide them with some of his old lottery tickets – showing the numbers he habitually played. There was a suggestion that he might have won something, and an offer for him to enter into a special promotion. Unwittingly, Mr. Edmonds had handed over the key piece of evidence that would convince the Corporation that the clerk had a legitimate claim to the winning ticket. He was befuddled by the interaction with his friends, and at this point was growing suspicious. He contacted the Corporation that day by phone to alert it of his suspicions. Although phone records confirm a four-minute call was made, the Corporation has no record of its content.

53 Once the ticket with the "right" numbers materialized, things moved swiftly. On Aug. 3, 2001, the Corporation again contacted the store clerk, who reiterated that the ticket did not belong to anyone else, and a few days later the retailer swore a Statutory Declaration attesting to her version of the facts. On Aug. 14, 2001, the store's accounts receivable were checked and it was confirmed that it did not owe any money to the Corporation. Other searches failed to disclose any significant wins by the retailers or previous investigations. The Corporation's Internal Audit Department reviewed the case and recommended payment of the claim. However, there were still some doubts being expressed. On Aug. 23, 2001, an internal e-mail alluded to the inconsistencies in the case, suggesting that:

> … at this point our concern is [her] cashing the ticket on behalf of a family member, which she has denied. … we cannot prove, with certainty, that [she] is not the legitimate owner of the ticket, it is recommended that the $250,000.00 prize be paid… immediately.

54 On the same day, another lottery official sent an e-mail to one of the Corporation's in-house lawyers asking about the implications of the Rutherford case: "Given the recent judgment with respect to the amounts owing to a co-owner of a winning ticket, are we sufficiently protected if faced with a similar situation here down the road?" The Aug. 31, 2001 reply suggested that there was not much that could be done if someone was "lying" (even under oath). However, it was also noted that:

> It would be interesting to know how, exactly, [the retailer] was prompted regarding the purchase location, and how exactly, she explained the consistency of the selected numbers with those of a (winning) ticket not

> issued at her own store. It is important to bear in mind that the court judgment that you alluded to (i.e., *Rutherford*) … also focused to a great extent on what steps [the Corporation] took (or "failed" to take after the plaintiff came forward notwithstanding the fact that we had already paid out the prize to someone else).

55 In the end, payment was approved through the proper channels and the store clerk was presented with a cheque for $250,000 on Aug. 24, 2001. Bob Edmonds was shocked to learn from the local paper of his friend's good fortune. He realized that the retailers he had trusted had deceived him. On Sept. 8, 2001, Mr. Edmonds contacted the Corporation and was asked to provide further information. On Sept. 13, 2001, he faxed a drawing showing what had occurred when he originally went to the store to validate the winning ticket, along with point-form notes. While the information made sense to him, the Corporation decided it could do nothing with it. The next day, Mr. Edmonds faxed the Corporation his calendar notes for July 2001, to show where he had been at the time the free ticket had been dispensed. Again, the Corporation did not understand what he was trying to get at. However, instead of contacting Mr. Edmonds to seek additional information, it let his complaint languish. The contrast is stark: When "insider" claimants present themselves to the Prize Office, the Corporation's staff go to great pains to try to jog their memories with clues to confirm their win. However, when a bewildered and distressed senior called to report a serious crime, no one bothered to clarify the nature of his concerns.

56 On Jan. 4, 2002, Mr. Edmonds' son contacted the Corporation to inquire about the status of his father's file. He was told his father had not provided any useful information. On Jan. 8, 2002, Mr. Edmonds' son told the Corporation that the police were reviewing the incident his father had reported to the Corporation on Aug. 1, 2001. He also faxed in some of Mr. Edmonds' lottery tickets, showing the numbers that he regularly played. On Jan. 11, 2002, Mr. Edmonds' son faxed a letter to the Corporation setting out his claim. On the same day, an Ontario Provincial Police officer contacted the Corporation about the case.

57 By January 2002, the Corporation was beginning to take Mr. Edmonds more seriously. On Jan. 14, 2002, it was noted in an internal e-mail: "The facts in Edmonds' claim are accurate, which lead us to believe that the ticket [the retailer] presented may have belonged to Bob Edmonds." Another official contacted a Corporation lawyer on Jan. 23, 2002, asking whether the Corporation should

> … pursue whatever means are available to it to "freeze" or secure the assets of the retailer, in order that any criminal or civil action initiated,

will ultimately result in this claimant "recovering" the prize amount (assuming the retailer "stole" the ticket).

58 However, the Corporation remained reticent. On Jan. 25, 2002, one of its lawyers wrote a classic "brush-off" letter to Mr. Edmonds, telling him it was his responsibility to ensure that the retailer was trustworthy:

> While [the Corporation] strongly believes that our Retailers generally act properly and in the best interests of our consumers, we are taking your apparent concerns seriously and we are looking into the actions of the Retailer in your situation. .... However, please bear in mind [the Corporation] is not responsible for any alleged actions of the Retailer along the lines suggested by you or your son. ...

59 The Corporation's records indicate that it considered but rejected the option of pursuing its indemnity rights against the retailer to recover the prize money. There was clearly some debate about the legalities of the situation. As one official wrote in an internal e-mail:

> While these documents seem pretty compelling, I am not sure what standard of evidence would be necessary to succeed in any action by [the Corporation] against the retailer. If the OPP have reasonable grounds to lay charges and DO SO, then would this not be sufficient for [the Corporation] to proceed?

60 On March 1, 2002, the OPP did arrest and charge the husband-and-wife team who ran the Coboconk variety store with fraud and theft over $5,000 in relation to the lottery win. The Corporation acted swiftly at this point, writing to the Coboconk store and suspending its privileges to sell lottery tickets.

61 By March 8, 2002, Mr. Edmonds had retained counsel and had filed a civil lawsuit against the retailers and the Corporation. Once the Corporation was served with the legal documentation, it went into defence mode. Despite the views expressed by some Corporate officials that Mr. Edmonds' claim rang true, the billion-dollar government agency geared up to do battle with a retired senior. At the same time, it decided to bring a cross claim against the retailers, to protect the Corporation's financial stake in the event that Mr. Edmonds won his case.

62 Mr. Edmonds' civil case dragged on for the next few years through the usual stages; documents were exchanged and key witnesses interviewed under oath. (Tellingly, the Corporation never even alluded to the Rutherford decision during the proceedings.) In January 2005, Mr. Edmonds settled his civil claim with the

retailers for $150,000. In the same month, criminal charges against the retailers were stayed, primarily as a consequence of their compensating Mr. Edmonds. Mr. Edmonds' claim against the Corporation, however, continued. A pivotal event occurred on March 15, 2005, when the court released a ruling on the legal issue of whether the Corporation owed a duty of care to Mr. Edmonds – a fact that it had disputed. The judge considered the Corporation's Insider Win Policy and stated:

> In my view, by adopting the policy, the [Corporation] has acknowledged the real possibility that a retailer could gain an unfair advantage in the conduct of the games and try to claim a customer's ticket as their own. [....]
>
> In enacting the policy, the [Corporation] was recognizing that the public's perception that an insider could gain an unfair advantage over a customer was a reasonable one.

63 The judge confirmed that the Corporation owed a duty of care to Mr. Edmonds. On March 17, 2005, it settled with him for $200,000, after spending $429,600 in legal costs fighting him. But in the spring of 2005, the facts of the Edmonds case began to come to the attention of the media. Displeased with the public exposure, the Corporation relied on the "gag" clause in the settlement agreement, warning that it would take action against Bob Edmonds if he told his story publicly. Another phase of litigation began as Mr. Edmonds' lawyer sought instructions from the court in July 2006 on how far Mr. Edmonds could go in discussing the case, and the Corporation filed a cross motion, claiming that Mr. Edmonds had breached his settlement agreement.

64 The Ontario Lottery and Gaming Corporation slept through the first wakeup call of the Rutherford case and the second of the Edmonds case. Our investigation also revealed that the Corporation had been slumbering for years, letting the alarms ring unheeded when it came to retailer theft and fraud.

On the Inside Track

65 Prior to October 2006, customers who won $50,000 or more in an OLG game were considered "major prize winners" and were subject to an interview to determine their ownership of the winning ticket as well as to prepare them for publicity. If a major winner turned out to be an "insider" under the Corporation's policy, additional measures were taken. The Insider Win Policy designated a

number of employees and affiliates as insiders – including retailers, who were added to the list in 1996. However, Corporation documents suggest that some officials viewed the Insider Win Policy regarding retailers as merely a matter of optics, not a means to protect against a real threat to the security of the lottery system.

66 When a prize claimant arrived with a "major win" at the Toronto Prize Office counter, the staff would ask three questions:

- Is this your ticket?
- Are you sharing this prize with anyone else?
- Are you affiliated with the Corporation in any way?

67 If the individual was identified as an insider, the "major winner" interview conducted by Prize Office staff would place more emphasis on the ticket purchase and validation history as well as the insider's own playing patterns. The purpose of the Corporation's interviews and investigations was to confirm that the ticket was purchased by the individual presenting it. In the case of "online" tickets, the Corporation is able to track through its data systems when and where a ticket was purchased and validated. As for "instant" or scratch-and-win tickets, it knows the retail location and time when any given package of tickets was activated, and it can also track validation information for winning tickets.

68 The higher the prize amount, the more senior the Corporation official who must approve payment. The Corporation's general practice has been to pay prizes under $50,000 to whoever presents the ticket, without in-depth ownership investigation.[4] Players claiming winning tickets worth more than $50,000 would be questioned about purchase details and the information verified through the OLG's data systems. If the purchase details could not be verified, more questions would be asked. When the Corporation was satisfied, the prize would be paid. In cases where details were still in dispute, players would be asked to sign a Statutory Declaration asserting their claim – and payment could be delayed until the ticket expires (generally one year). In disputes concerning the rightful ownership of a winning ticket between two or more persons, the Corporation would pay the prize into court while the parties pursued their claims.

69 A review of insider wins indicates that from 1999 to 2006, the Corporation required that at least eight Statutory Declarations be signed. In that time, only one claim by an insider was not paid. In 2003 and 2004, however, a series of

[4] Prizes over $1,000 are also verified for outstanding payment to the Family Responsibility Office.

problematic insider claims set in motion a tug-of-war over the way the Corporation viewed and handled insider wins.

Finders Keepers

70 In one case, a retailer in Orillia mailed in a $250,000 winning Encore ticket for validation in April 2003. When he arrived at the Prize Office for an interview, he was evasive, and could not account for the numbers that had been manually selected. The Corporation also discovered that this retailer had previously contacted the police and asked what to do with a ticket lost by a customer. As a result of further questioning at a police station, the retailer confessed he had found the ticket and had tried to claim it as his own. After a videotape from the store was reviewed and a news release issued in April 2004, the true owner of the ticket was identified and awarded her prize. The retailer was charged with attempted fraud.

71 In another case in 2003, an owner of a corner store in Keswick presented a winning 6/49 ticket but could not provide purchase information. He eventually admitted his wife had found the free-play ticket while cleaning behind the freezer in the store. The Corporation still paid the claimant, but only after the ticket had expired.

The Best Things in Life Are Free

72 The lowest and therefore most common prize in the Corporation's lotteries is the free ticket. One online ticket is fed into the terminal and if it is a winner, a new ticket is generated – which may or may not be an even bigger winner. The Corporation has received complaints from time to time that retailers have kept customers' free tickets for themselves. In one case, a retail operator arrived at the Prize Office with a winning $250,000 Encore free play ticket. The free play ticket had been generated at his store in Nobleton, but the original ticket had come from another location which he was unable to identify. During the interview, he declined to take a polygraph test and even asked about the process for "a found ticket." In the end, the Corporation accepted a Statutory Declaration from the retailer and paid him the prize after the ticket had expired.

73 In another case, two Toronto retailers presented themselves as $250,000 6/49 Encore winners on a free play ticket, but the details they gave about where and when the ticket was purchased were very murky. They claimed never to have bought tickets at certain other stores, but the Corporation had evidence to contradict this. The retailers' story about how the ticket was validated also

changed as the questioning progressed. Despite the inconsistencies in their story, the retailers provided a Statutory Declaration and were paid after the ticket expired.

74 But the most shocking story involved the sister of a convenience store manager in Burlington, whose parents also worked in the store, who presented a winning Super 7 free play ticket for $12,500,000. At first, the woman called the Prize Office and claimed she was calling on behalf of her brother who "owned" the ticket. At the Prize Office she said she was not affiliated with a retailer. She denied that the ticket belonged to her brother, and explained that she had previously said this to protect her privacy. She could not provide information to confirm when the winning free play ticket was generated, nor could she even prove she was in the city where the original ticket was purchased. A Statutory Declaration was prepared in which she stated she did not have a brother and was not connected to any retailer in any manner. The Corporation then discovered that she had the same last name as the retailer who had generated the free play ticket, and he confirmed she was his sister. Confronted with this, she again stated she was trying to protect her family's privacy. Incredibly, despite all this, the Corporation paid her the $12.5 million after the ticket expired.

Not Up to Scratch

75 In 2004, the Corporation also discovered an extreme case of "pin-pricking," a practice in which retailers lightly scratch the surface of instant-win tickets with a pin to reveal whether or not they are winners. The Corporation found 67 blatantly scratched tickets at one location in Oakville. The retailer's contract to sell lottery tickets was suspended.

Getting the Inside Story

76 It appears that 2004 was a banner year for controversial insider prize claims. It is mind-boggling that the Corporation actually paid out millions of dollars in the circumstances it did. The ludicrousness of this did not escape all Corporate officials. On Aug. 8, 2004, one manager prepared an executive briefing on the situation. He noted that the purpose of the briefing was to:

1. Ensure the Executive are aware of current and past practices associated with prize payments;

2. Highlight circumstances where we believe tickets may have been stolen from unsuspecting consumers;

3. Seek direction for future payment/policy decisions.

77 The e-mail referred to the above five win claims in which the lawful status of the bearer of the tickets was unclear, and ended with a number of recommendations to address these circumstances, including encouraging customers to sign their lottery tickets, installing ticket-checking devices for consumers at the retail level, changing the music played through the terminal when a prize is won (to signal the size of the prize) and freezing sales terminals when a major winning ticket is validated (to allow for instant communication between the customer and the Customer Excellence Centre).

78 This same official continued to express concern about the series of suspicious cases and to champion increased security measures to ward against retailer fraud. In an e-mail of Sept. 1, 2004, he set out detailed concerns regarding the case of the $12.5-million claim. He noted that:

> Redemption activity at [this] retailer suggests that a pattern may exist demonstrating that retailer systematically collects free play tickets from unsuspecting customers.

79 On the same day, he also expressed concern about this issue in an e-mail to the new Chief Executive Officer, referring to the case and noting, "it still rots my socks." The Chief Executive Officer was sympathetic, noting in his e-mailed response:

> I used to have to issue gaming licences to companies or individuals that I just knew with absolute certainty were dirty. I just couldn't prove it. Sometimes you hold your nose....

80 In October 2004, the same security-conscious official noted that lottery terminals did not play music during the validation of a winning ticket valued at more than $300 and less than $990 until the retailer said "yes" to payment. He observed that the lack of music provided a "very clear opportunity" for the retailer to fail to deliver the customer's prize, either by accident or on purpose. He remarked, "I believe that this functionality should be changed at the earliest possible opportunity."

81 This focus on protective measures against retailer fraud is laudable, however, it was not necessarily shared by other officials. One would think that the slew of recent suspicious cases would give the Corporation pause, and perhaps lead it to

intensify the process employed to examine insider wins. But quite the opposite proved true.

82 On Aug. 6, 2004, a group of Corporate staff met to discuss tracking of suspicious activity at the retail level. However, the Vice-President, Sales and Service suspended this initiative. In the same month, it was decided that a Security Assistant from the Corporate Security and Surveillance area would no longer sit in on initial insider interviews with the Prize Office staff. An Aug. 13, 2004 e-mail from the Vice-President, Corporate Security and Surveillance noted:

> Please suspend this program until further notice – we will not be conducting any new insider win investigations or continuing any ongoing insider win investigations until further notice ....

83 The Corporation did indeed proceed to change its practice with respect to retailer wins. But rather than seek to tighten its procedures relating to insider wins, given the evidence of real and potential retailer fraud and theft, the Corporation began the process of justifying doing even less.

Inside or Out?

84 In August 2005, two memos were prepared by a Corporate manager regarding the Corporation's Insider Win Policy. It was recommended that the Insider Win Policy apply solely to the Corporation's Lottery Division employees, and not retailers. The explanation for the recommendation was essentially that the Corporation had never denied a claim by an insider. The manager also recommended that the Corporation stop asking for purchase details, moving to "a Bearer (Holder) Policy," allowing the Corporation to simply pay whoever presented a winning ticket.

85 The proposed changes left some officials perplexed. It was noted in one e-mail of Oct. 15, 2004 that following such a policy would mean that the questionable retailer win claims identified in that year would not even have been detected. However, the Corporation continued to contemplate exempting retailers from the Insider Win Policy. We obtained a series of internal e-mails from late 2005 to early 2006, reflecting discussion around the proposed changes.

86 The Internal Audit Division is responsible for conducting process reviews before prizes are paid out to insiders. In 2005, it audited the claims records for 31 such winners, three with prizes over $1 million. In a Nov. 25, 2005 e-mail, an Internal Audit Manager wrote to the OLG's Senior Counsel expressing concern about the proposed changes to the Insider Win Policy. He observed that the proposal to

limit the "insider" definition "suggests to me that the risk and perceptions issues may be underestimated or misunderstood."

87 This official also suggested "the Insider Win Policy is one of the more frequent media issues and is one of great interest to them from an integrity perspective." He added:

> The tone of the "new" policy ignores the stringent integrity perspective that historically predominates at [the Corporation] and results in us erring on the side of caution. There is a practical and a perception side to this policy.

88 In a March 21, 2006 internal e-mail, it was noted that the new Insider Win Policy would "be about addressing public perception." We obtained a number of e-mails showing drafts of the new policy. In an April 20, 2006 e-mail to senior officials, it was noted that the target date for its implementation was to be May 8, 2006.

89 On April 21, 2006, one manager noted in an e-mail:

> If we move to a pay-the-bearer policy, Prize Office staff will no longer make efforts to determine if a ticket is being presented [for] payment by the proper parties. If we don't ask basic questions to determine ownership at the time of redemption it will have implications with respect to stolen tickets … insider wins… Our ability to deal with these issues will be eroded…

90 He also noted with respect to the removal of retailers from the definition of "insider" that:

> …I believe they should be included. All past Insider issues have involved retailers or their staff.

91 The Corporation did take some steps in the direction of protecting the public against retailer fraud and theft, but they were not considered a priority and were slow in coming. Eight months after it was suggested that ticket self-checkers be installed, a pilot project introduced the machines in 250 locations on a trial basis. On April 25, 2006, two years after the suggestion was made to have online terminals freeze when a major win validation occurred, the Corporation introduced its "terminal freeze" process for major winners of online prizes of $50,000 or more. With this initiative, when a major winning ticket is validated, a "Big Winner" jingle and video message are displayed on the Customer Display Unit (the video screen that attaches to an online terminal). During the freeze, lottery terminal activity is suspended and the retailer is prompted to call the

Customer Excellence Centre so that a representative can confirm ticket details with the customer on the spot.

92 Despite these security improvements, the Corporation was still moving in the direction of excluding retailers from the Insider Win Policy. Events converged in April 2006, however, that stopped this plan in its tracks. That's when it was publicized that a Corporation employee had won an $8.5-million 6/49 jackpot. The Corporation boasted that because of the heavy security surrounding its lotteries, there was no restriction on employee participation. In the same month, *the fifth estate* began to inquire about insider wins at the Corporation in connection with its research into Bob Edmonds' case. In our interviews, senior officials, including the Chief Executive Officer, acknowledged that these developments led them to postpone their plans to limit investigation of retailer wins.

93 What they did next was consistent with the Corporation's preoccupation with marketing and image. Rather than dealing head-on with the problem of retailer theft and fraud, the Corporation opted to embark on a cosmetic makeover.

The Name Game

94 The Ontario Lottery and Gaming Corporation's new corporate identity emerged in September 2006, with the shortening of the Corporation's acronym from "OLGC" to "OLG." On its website, the newfangled OLG boasted:

> One of the best ways to achieve our business objectives and fulfill our obligations to Ontarians is to deliver OLG's "brand promise" – to create excitement and possibility for customers within a safe and responsible gaming environment – to a wider segment of the province's adult population.
>
> Strong brands inspire trust among customers and the public. A strong OLG brand is a stamp of quality and integrity in gaming entertainment …
>
> A single and consistent OLG brand image … will build brand equity across all our entertainment products, just as a well-known and trusted company name provides customers with a "seal" of quality and authenticity when they purchase the variously named products of that company.
>
> The brand equity that we have built throughout our history is demonstrated by the confidence Ontarians place in our entertainment

> products. This is precisely the reason why we chose an evolutionary approach in changing our name and logo....

95 The Ontario Lottery and Gaming Corporation's traditional corporate logo was modified. The red triangle was retained, but three circles were added around the letters "OLG" to reflect the Corporation's three core values of integrity, respect and accountability. The Corporation says:

> Our brand strategy is designed to unite all OLG products, services and venues under one common identity, instilling a higher level of confidence and trust in all our operations.

96 This rebranding exercise did not come without a cost. The expense of creating the "halo" effect over all of the Corporation's products and services was $190,000 for a new brand and logo, and $3.18 million for new signage.[5] The Corporation also moved its Toronto Prize Office into new media-friendly premises in the downtown core. As it turned out, the Corporation's bid to "instill a higher level of confidence and trust" was challenged just a month after it launched its expensive new identity.

Damage Control

97 The CBC did not blindside the OLG when it broadcast *Luck of the Draw*. It had provided some notice of the content of the show beforehand, and had interviewed Corporate officials. The Corporation leapt into damage control mode. On Oct. 24, 2005, the day CBC news reports broke the Edmonds story as a prelude to the *fifth estate* broadcast, the Corporation placed information on its website to reassure the lottery-playing public. Under the title, "Ontario is a Leader in Lottery Security," it noted that the Corporation conducts approximately 700 million transactions with lottery players through its network of retailers and pays more than $1.2 billion in prizes every year. It stated that "Integrity is a core value at OLG and we offer one of the safest, most secure and most highly regulated products in the world." Anticipating concern about retailer wins, it remarked:

> It is critical to note that when a retailer/clerk wins a major prize, OLG conducts an investigation 100 per cent of the time. Each case is thoroughly investigated by our internal staff. If OLG believes there is a serious concern with a lottery prize claim, the police are contacted.

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[5] The OLG says, however, that new signage at the gaming sites, which cost $2.66 million, was not directly related to the rebranding initiative, as corporate signage did not previously exist at those sites.

> Only in four occasions in the past five years did OLG call the Ontario Provincial Police, and in two of those instances, it was merely for information purposes.
>
> We continue to stand by the hardworking men and women who rely on convenience stores for their livelihood, and who like the majority of the population are by and large honest, dedicated people.

98 The Corporation also emphasized a number of its security measures, such as customer-facing information screens on lottery terminals, which display a message and play music to tell customers they've won. Under the heading "Consumer Protection," it recommended that customers sign the back of their tickets, check their numbers themselves, and ask retailers to show them their validation slips. However, these early attempts at a public relations counter-defence were insufficient to withstand the surge of criticism that soon erupted.

The Awakening

99 Oct. 25, 2006 is a day that will resonate forever in the halls of the Ontario Lottery and Gaming Corporation. One official during our investigation referred to it ominously, noting, "We call it 10/25." One day earlier, CBC news outlets had previewed the story that was to air on *the fifth estate*, and other media, including newspapers and radio stations across the province and the country, picked it up. Events unravelled quickly thereafter. Legislative Assembly members expressed concerns about the state of the Ontario Lottery and Gaming Corporation. The Minister of Public Infrastructure and Renewal defended the Corporation in the Question Period that afternoon, referring to the Corporation's significant internal controls. He quoted the opinion of a leading forensic audit firm, Ernst & Young, about the security of the Corporation's processes which had found

> ... that internal control processes related to our lottery system are appropriate. Claimants subject to the Insider Win Policy are subject to additional scrutiny and interviews by OLG's prize office, and in addition, a review is conducted by OLG's internal audit department before payment is approved.

100 However, it was clear further steps would have to be taken to rehabilitate the Corporation's reputation. The Minister wrote to the OLG on Oct. 25, 2006, emphasizing that, "revenues from OLG programs are fundamental to the province's ability to deliver many important social programs." While the Minister praised the Corporation, noting "Ontario has proven itself among the best jurisdictions in lottery security due to the commitment and effort of OLG,"

he called for the Corporation to thoroughly investigate CBC's allegations of widespread insider wins:

> I understand that your senior staff have been unable to validate or disprove *the fifth estate*'s assertions based on the information currently available to them. I would like your commitment that the OLG will undertake a comprehensive in-depth review and analysis and that you will advise me of your findings by Nov. 8, 2006.

101 On the evening of Oct. 25, 2006, Corporate officials were glued to their television sets as they watched the *fifth estate* story unfold. The splash the story made had the effect of a bucketful of cold water in the face, awakening the Corporation from a long-standing stupor. The Ontario Lottery and Gaming Corporation's slogan "Everyday Possibilities" began to take on a new and ominous meaning. In addition to Mr. Edmonds' case, the program also featured a statistician stating that the probability of 200 "insider" wins of OLG prizes of over $50,000 occurring naturally was virtually inconceivable – a remarkable "one in a trillion trillion trillion trillion." Instant-win games were earmarked as being particularly problematic. The Corporation was now thrust into a high-stakes game. It had to rehabilitate its position quickly and restore the trust of the public in order to effectively carry out its mandate of generating billions of dollars in revenue for Ontario.

102 When the Premier rose in the Legislative Assembly on the afternoon of Oct. 26, 2006, he acknowledged the very serious nature of the allegations, noting:

> The fact of the matter is that thousands, if not tens of thousands, of Ontarians regularly go and place their money down, and they have every reason to expect that the system run by the Ontario Lottery and Gaming Corp. is done with complete integrity and meets all security needs.

103 The Premier referred to the review that the Minister had requested and to my investigation, noting that the government would await their outcome. The Minister also expressed his regrets for Mr. Edmonds' ordeal and indicated that OLG's Chief Executive Officer would personally apologize to him. The Chief Executive Officer of the Corporation also responded:

> We look forward to any recommendations to improve our customer service and to ensure that we continue to be a leader in lottery security. OLG is committed to full co-operation in the reviews that will be undertaken of our practices and to transparency in all of our activities.

104 The Corporation's first act was to finally acknowledge that it had done wrong by Bob Edmonds. On Oct. 26, 2006, the Chief Executive Officer announced that the Corporation had, "in an effort to remove any potential barriers to the Ombudsman's investigation," decided to release Mr. Edmonds from his confidentiality agreement. The Chief Executive Officer stated:

> This was a regrettable situation that should not have occurred, and one that was clearly unacceptable to everyone involved, and I have spoken with Mr. Edmonds and offered him a personal apology.

105 Conscious of how bad it looked that it had spent over half a million dollars battling Mr. Edmonds, the Corporation emphasized on its website that the retailers were ordered to pay restitution. In fact, this was not true – they had voluntarily agreed to pay the Corporation $200,000, and at the rate of $300 a month, it is doubtful that the debt will ever be extinguished. As well, apologizing to Mr. Edmonds, while appropriate and overdue, did not address the underlying systemic issue of the Corporation's historic indifference to retailer misconduct. Meanwhile, the Corporation was about to devote considerable time, energy and funds to challenging the CBC's statistical premise.

The Numbers Game: Quantifying Insider Wins

106 In April 2006, *the fifth estate* made a request under the *Freedom of Information and Protection of Privacy Act* for information from the OLG, including insider win forms and statistics showing the frequency of insider wins. This placed the Corporation in an awkward position, as it had not kept such statistics or monitored insider wins. The figures the Corporation provided to the CBC in July 2006 indicated that of roughly $2.6 billion in major prizes won from 1999 to July 2006, about $100 million had been won by insiders. This represented 214 inside wins out of 5,713 big jackpots. While the Corporation provided some insider win forms, about 60 were missing. Accordingly, it was not possible to determine how many of the "insider winners" were retailers.

107 The CBC provided the information obtained from the OLG, along with the results of a survey of 200 retailers it had conducted, to Prof. Jeffrey S. Rosenthal, a Professor of Statistics at the University of Toronto. Assuming 10,300 OLG retail locations, Prof. Rosenthal estimated that the total number of retail employees was 36,050. He also took into consideration evidence from a Corporation official at the Edmonds trial to the effect that retail insiders numbered 50,000-60,000. From

all this, Prof. Rosenthal determined that retailers spent 1.5 times as much as the average adult on lotteries.

108 Prof. Rosenthal issued his report, *Analysis of Insider Ontario Lottery Wins*, for *the fifth estate*. In it, he concluded that retailers were winning prizes of $50,000 and above about 5.7 times more than expected, assuming a retail population of 36,050 – or, alternatively 3.5 times more than expected, assuming a retail population of 60,000. Either way, he said the probability of this happening by pure luck was less than one chance in a trillion trillion trillion trillion – i.e., impossible. In his opinion this suggested that, similar to Mr. Edmonds, other lottery customers had missed out on major lottery prizes that they had won. He concluded that store owners and employees won significantly more major lottery prizes than they possibly could by chance. He also found that retailers were winning instant-win games about 15 times more often than expected, assuming a retail population of 36,050 (or nine times more often than expected, assuming a retail population of 60,000), and that it was also statistically impossible for this to occur randomly.

109 Even before the *fifth estate* program was broadcast, the Corporation had been scrambling to dispute this hypothesis. An Oct. 17, 2006 Corporation e-mail stated:

> Recently, OLG conducted a very intense on-camera interview with *the fifth estate* in which we reiterated that we believe this [major insider wins] is a rare occurrence which we took extremely seriously, and while CBC has several angles of attack directed at OLG that we've been dealing with, here's one of the primary issues:
>
> The CBC claims their investigation shows that retailers are winning at a much greater rate than average Ontarians, and in some cases (instant ticket wins) they are actually winning at a 10-times higher rate than other lottery customers, hence indicating that retailers are stealing tickets.
>
> We at OLG are in the midst of thoroughly analyzing our numbers, but our preliminary findings are that the CBC is way, way off base here. We think they arrived at these numbers primarily because they are working with a much smaller group of retailers/clerks than really exist. The CBC got the number of inside winners from us through FOI requests, but they got the number of retailers through other sources, and the numbers are too low. We are working to correct this and send them our analysis.

110 Following Prof. Rosenthal's initial analysis and days before the *fifth estate* program was to air, the Corporation advised the CBC that its estimate of the total

number of retail employees was 140,217. Prof. Rosenthal said he believed the figure was inflated, but he concluded that it still did not explain the large number of insider major lottery wins.

111 My investigators met with Prof. Rosenthal, who said he is convinced that to truly understand the nature of the insider lottery wins, it is important to know how many of the 214 insider wins under investigation came from each of the various lottery retail business types (Convenience Independent, Convenience Corporate, Gas with Convenience, Supermarket, Health Care, etc.). He stood by his original analysis, and explained that he took into consideration that lottery retailers spend more on lottery tickets than the average Ontario adult. He does not believe even the OLG's latest figures explain all of the recorded insider wins.

When the Numbers Don't Add Up

112 The Corporation has maintained that it is virtually impossible to have an accurate record of lottery retail employees, given the difference in operations and large turnover in the industry. The 140,217 figure, while appearing specific, was simply a best guess. Based on its own research, the Corporation concluded that there were 10,911 retailers and estimated the number of employees for each type of retailer. For instance, for each independently owned convenience store, it estimated there were four employees selling, with an annual turnover of one, but for each convenience store owned by a corporate chain, it estimated five employees with a turnover of two. For gas stations with convenience stores, it estimated eight employees with an annual turnover of 50%.

113 It is difficult to put much stock in the retailer estimate the OLG gave to the CBC. At one point, a staff member suggested that since supermarkets don't allow everyone to validate tickets, the number of retail insiders could be reduced to 106,185. At another point, the figure of 175,000 was suggested to capture all those working in retail stores, even if they did not handle lottery tickets.

114 Since the Corporation did not have the statistical information and analysis necessary to refute Prof. Rosenthal's findings, it set out to create some – but it still couldn't get the numbers straight. It told the CBC that the number of major wins between 1999 and July 2006 was 5,713, but after it calculated the insider win frequency and found it was 2.4 times the general population for 1999 to 2005, it used a figure of 5,931 major wins. The figure for major wins was later recalculated as 5,385, and still later as 5,337. My office was told that the difference in the later figures likely related to a game being overlooked. However, the Corporation maintains that this does not change the end result of a

win rate of 2.4 times that of the general population – as opposed to the substantially greater rates suggested by Prof. Rosenthal's analysis.

115 The Corporation had a little more luck in identifying the classes of insiders that had won big. For the period from January 1999 to Nov. 6, 2006, it identified 220 insiders as big winners: 78 of those were retail owners, 131 were retail employees, nine were Corporate employees and two Corporate family members. No major wins had been reported by employees of other areas covered by the Insider Win Policy. The Corporation also looked to a market research firm to verify its theory that retailers play more than the general public (and hence should be expected to win more). The firm's survey of 380 retailers was conducted on Oct. 23 and 24, 2006, and the results reported on Oct. 25 and 26, 2006. It found that on a per capita basis, lottery retailers spent an average of 2.8 times more money on lottery tickets in a four-week span than ordinary consumers ($33.90 vs. $12.30). When different spending rates for owners, managers and employees were factored in, the retailer rate was reduced to 1.9 times that of the general population ($23.30 vs. $12.20). The research company concluded:

> Everything else being equal, it would be expected that [retailers'] win rate would be commensurate with their higher play rate.

116 Just after the Oct. 25 *fifth estate* aired, the Corporation was contacted by a mathematician. According to his analysis, the probabilities of winning over $50,000 were different depending on the game played, and 200 wins among 140,000 retailers was actually quite possible. He considered two assumptions – that retailers are heavier gamblers and heavier gamblers spend a higher proportion of their money on games that offer a higher probability of winning over $50,000.

117 The Corporation also sought the input of a statistician it had retained in the past to review the odds of games and provide advice. He reported to the Corporation on Oct. 29, 2006. He suggested that it was not possible to render an accurate judgment without a good estimate of the number of tickets purchased by insiders.

118 Without any definitive answer, the Corporation proceeded to engage another market research company to look into data related to the number of insider wins from 1999 to 2006. The company issued its report on Nov. 3, 2006. It noted:

> Our review shows retailers will win prizes of $50,000 or more in greater proportion than the general population simply because:
>
> - They spend more money ($23.30 versus $12.20: i.e. 1.9 times greater);

- They tend to spend disproportionate amounts of money on games with better odds (i.e., Instant Crossword, Daily Keno and Encore), and;

- Are better informed about lottery odds and the number of prizes available for instant games.

119 The research report indicated that if retailers' per capita spending is approximately twice as much as the general population, all else being equal, their win rate would be twice that of consumers. It concluded:

> Based on this information, it is our conclusion that the claimed gap between actual "retailer insider wins" and the number of theoretical "expected" winners would be much smaller than the number reported in the media.

120 The Corporation also retained a statistician from a U.S. university, who reported his findings on Dec. 1, 2006. He commented on the uncertainty of the data used in Prof. Rosenthal's calculation, and suggested that the real questions were whether insiders adjust their playing behaviour as a result of contact with lottery players, and if so, whether they win more frequently than would be explained because of such a learning experience.

121 Yet another professor from a U.S. university reported to the Corporation on Jan. 23, 2007 that there was a substantial degree of uncertainty with respect to the actual number and spending habits of retailer insiders. He suggested "perhaps insiders are better informed and play the games with better chances more often than the general public." He concluded that "the difference between that expected number and the actual number of wins by insiders may well lie within the limits of normal chance variation."

122 Finally, one more Canadian university professor of mathematics and statistics gave the OLG his assessment of *the fifth estate*'s analysis of insider wins on Jan. 29, 2007. He stated:

> My overall conclusion is that from the available data, the assertion that the retailers are winning at a higher rate cannot be justified because such an inference is dependent on the number of retailers and their yearly lottery expenditures, which are not known with a high degree of certainty. [....]
>
> Since not all lotteries are played with equal frequencies, this limits the applicability of [the model used by Prof. Rosenthal].

He also opined that "the atmosphere has been sufficiently poisoned since the CBC telecast, that future survey data would not be reliable."

123 For my Office's investigation, we retained our own expert, a professor from the Department of Statistical and Actuarial Sciences at an Ontario university, to assist with our analysis of the various competing expert opinions. He echoed the comments of some of the others on the unreliability of the data on which Prof. Rosenthal's assessment was based. He noted that generally if lottery wins were distributed fairly, one would expect to see that the proportion of prizes won by insiders would be equal to the proportion of money spent by insiders. In his view, the type of probability analysis carried out by Prof. Rosenthal is useful and could signal to the Corporation the need to take steps to prevent insider fraud.

124 Our expert also made a number of recommendations. He suggested that the Corporation develop methods to obtain a reliable estimate, or an actual count, of the insider population on a regular basis. He noted that this could be done by way of a regular census of all lottery sales outlets. For this to work, each lottery outlet would be required to file the names of the owner and current employees selling tickets. He also suggested that the Corporation develop a clear working definition of "insider" as it applies to retailers across all sales channels. He concluded that the Corporation should develop a method to obtain a valid estimate of the total amount spent on lottery games by insiders. Finally, he concluded that as a quality control procedure the Corporation should regularly check the probability of insider wins, using accurate data, and carry out an investigative review of security procedures when warranted. He suggested that this could be done or supervised by the Corporation's in-house statistician.

125 While, predictably, the experts do not all agree, it seems logical that the more accurate information the Corporation has at its disposal regarding the incidence of retailer lottery wins, and for that matter any insider wins, the better it will be equipped to assess whether there are security issues relating to its various lottery products. By failing to keep track of this information, the Corporation was rendered vulnerable – and so in turn were its customers.

126 In addition to the time Corporate staff spent gathering information and generating statistics on insider wins, the Corporation ended up paying $5,000 for the survey of retailer spending and $44,250 to obtain the views of external statistical experts. The OLG should not be caught off guard again when it comes to gathering and analysing statistics. The Chief Executive Officer told us it would keep track of insider wins in future. However, it is not clear what form this will take.

127 As it became clearer to the Corporation that it could not categorically contest the statistical allegations made by *the fifth estate*, it attempted to divert the critical public focus with a campaign to restore trust in the lottery system by initiating a number of improvements.

Reputation Renovation: The Seven-Point Plan

128 Without actually acknowledging that it had not been vigilant enough in protecting the public from retailer fraud and theft, the Corporation began to take steps to win back the "goodwill" it had lost as a result of *Luck of the Draw*. It retained the forensic audit firm KPMG to conduct the review called for by the Minister. KPMG began its work on Oct. 29, 2006 and provided the Corporation with its Phase I Report on Nov. 3, 2006, in which it made the following five recommendations:

1. OLG should initiate a comprehensive educational campaign to make customers aware of the techniques they should employ to protect purchased tickets. In particular, the campaign should emphasize the need to complete and sign the back of the ticket at the time of purchase.

2. OLG should establish a policy that retailers will only validate tickets if the customer has completed and signed the back of the ticket. Tickets should not be validated and processed unless signed. OLG will need to provide training to retailers on this policy and will need to consider an appropriate approach to motivating and enforcing compliance.

3. OLG should consider a more comprehensive rollout of customer-accessible ticket checkers with an appropriate awareness program.

4. OLG should consider a review of the "insider" definition and policy with a view of making the policy more practical and controllable. As part of the changes to the "insider" policy we would suggest that the threshold of $50,000 that initiates more specific procedures and checks be reduced. Consideration should be given to returning to the 1995 level of $10,000.

5. OLG should consider the implementation of an automatic call logging facility at the Contact Centre. In conjunction with such an implementation, appropriate monitoring and follow-up processes should be developed and rolled out as well.

129 While KPMG was conducting its review, the Corporation was engaged in its own self-diagnosis. Armed with KPMG's first report, and based on suggestions from its own executive-level brainstorming session, on Nov. 9, 2006, the Corporation implemented a Seven-Point Trust and Security Action Plan, which it touted as a comprehensive package of new and expanded lottery security measures "to maintain and reinforce the trust of every lottery player in the province." The Chief Executive Officer stated at the unveiling:

> We have listened. We have acted. We will continue to listen to the people of Ontario, and take any further actions required to earn the trust they have placed in us …
>
> If even one player feels that our systems have failed them in any way, that's one too many… To anyone who has felt the need to question their trust in the OLG, to anyone who feels that we could have done more to protect the integrity of our games, to anyone who feels their concerns were not taken seriously enough, we apologize and we will do better.

130 The Corporation committed to the following seven steps, which mirrored KPMG's recommendations in a number of respects:

1. Installing at every lottery terminal location, a device enabling consumers to electronically check their own tickets and to see the value of their prize instantly;

2. Lottery retailers will be permitted to check tickets only for those customers who have been asked to sign the back of their tickets. There will be escalating penalties for retailers who fail to follow correct validation procedures, up to and including the removal of their lottery terminals;

3. Customer-facing video screens at lottery terminal locations will tell players in larger characters if they've won and if they are a big winner when they have retailers check their tickets;

4. OLG will conduct a public education campaign to assist consumers to protect themselves;

5. OLG's special toll-free telephone line will allow consumers to provide the OLG with ideas on additional security measures;

6. OLG will use an expanded team of professional investigators to probe every win of $10,000 or more by lottery retailers, compared to the current $50,000;

7. OLG will implement an enhanced complaints process and investigation procedure to improve customer service and to ensure that all accusations are handled effectively and properly.

131 KPMG issued a Phase II report on Nov. 23, 2006, containing 18 additional recommendations relating to specific controls for purchasing and authenticating tickets, retailer management, insiders, the Prize Office procedures, the interview process, handling of tickets, escalation procedures, tracking of incidents, counter ticket redemptions, call centre technology, the investigative process and practices from other jurisdictions. KPMG then moved to consider the issue of instant tickets, issuing a Phase III report entitled *Instant Ticket Gaming Review* on Feb. 29, 2007. This report contains 17 recommendations relating to instant ticket integrity, instant ticket processes and overall controls. The Corporation has expended more than $644,000 on KPMG's review alone. That review has identified a number of areas where improvement of the Corporation's practices and policies is warranted.

132 While the Corporation has expressed a willingness to act, and has taken some initial steps, it still has a long way to go to restore public confidence in the lottery system. At this point it is worthwhile examining what the Corporation has done so far in implementing KPMG's recommendations and its own Seven-Point Plan.

Life After Oct. 25, 2006

133 A sea change in the insider win review process has occurred since October 2006. Instead of looking for ways to evade responsibility for retailer conduct, the Corporation has done an about-face and beefed up its procedures. It has reduced the prize threshold for consideration of insider wins to $10,000[6] and required that all insider win claims be investigated at the first instance by the Investigations Department.

134 The Corporation's Vice-President, Corporate Security and Surveillance is a seconded Ontario Provincial Police chief superintendent. He believes that the new requirement that investigators probe insider wins from the outset will bring more credibility to the process. It is clear that the techniques formerly used in

[6] The Insider Win Policy threshold level has gone up and down over the years. It was originally set at $100,000, was reduced to $10,000 in 1996, and raised to $50,000 in 1998.

Prize Office interviews, even when a Security Assistant was present, were lacking in rigour. While the investigators have taken some police training courses, when it comes to lottery investigations, they essentially learn on the job. KPMG's Phase II report recommended that the Corporation document its investigative processes. It recently issued new investigative guidelines.

135 Until 2004, the Investigations Department had reviewed all insider wins. After the change in practice in August 2004, the number of investigations decreased substantially. In the 2005/2006 fiscal year, the Corporation's Prize Office processed 36,155 tickets and paid out over $400 million in prizes. There were 763 major winners and 31 insider wins (10 retail owners, 16 retail employees and five Corporation employees). However, the Investigations Department investigated only two insider wins that year. During our investigation, we were told that under the new post-10/25 practice, the Investigations Department has conducted 14 insider win investigations.

136 Remarkably, KPMG's review revealed that the majority of retail insiders identified during prize claim interviews were unfamiliar with the Insider Win Policy. Our investigation confirmed this. The term "insider" is not precisely defined, and not consistently applied by the Corporation. We were told, for instance, that the policy does not apply to immediate family members of retailers or their employees' families unless they are also employed in the lottery retail business. However, one official we spoke to suggested that the policy did apply to family members of retailers – and a document we found describing the "Big Win Terminal Freeze" process refers to spouses of retail owners as being affiliated with the Corporation. The Insider Win Policy as currently drafted captures all retail employees, even those in large supermarkets, whether or not they have any contact with lottery tickets. KPMG has recommended that the insider definition be reviewed and the policy further refined. Corporate officials indicate this is in the works.

137 At present, the Toronto Prize Office asks winners if they are "affiliated" with the Corporation. The word "affiliated" has become a term of art for the Corporation, and its meaning is not necessarily self-evident to the general population. Yet it is used by the Corporation on a daily basis to attempt to weed out those who may be subject to its Insider Win Policy. The Vice-President, Sales and Service noted that the issue of who is affiliated with the Corporation "is probably the biggest area of confusion." The Vice-President, Corporate Security and Surveillance noted that most people would say "no" when asked if they were "affiliated with the OLG." The Corporation should establish a series of questions that focus on whether the individual actually claiming a prize has any direct contact with the sale or validation of lottery tickets, for instance, as a retailer or employee, or

indirectly – for example, through a family relationship. Once again, this is an area in which KPMG has recommended change, suggesting that the Major Prize Win Form be redesigned to ask more specific questions. The Corporation does intend to enhance the interview process for major winners. However, determining the right questions will depend on the definition of "insider," which is still very much up in the air.

138 There is also potential for smaller-scale criminal activity relating to lotteries which will not not necessarily be captured by this revamped process. Consumer complaints are a fertile resource for the Corporation to use to identify retailers who may be taking advantage of the public through discreditable practices such as taking free tickets, switching tickets, or shortchanging consumers on winnings. However, the Corporation has traditionally not paid significant attention to consumer complaints. The staff who receive these complaints are the same individuals responsible for supporting the Corporation's retailer partners, and for promoting lottery products. Handling complaints and finding fault with the retailers the OLG depends on does not fit well with these workers' promotional role.

139 While not as headline-grabbing as theft and fraud, this is another area where my investigation found the Corporation is betraying the public's trust – and the right of all Ontarians to be treated fairly by a public institution.

You Pays Your Money and You Takes Your Chance: Treatment of Complaints

140 One of the disturbing features of Mr. Edmonds' story was the short shrift he received when he initially called the Corporation to complain. While phone records confirm Mr. Edmonds called the Corporation on Aug. 1, 2001, it has no record of any contact with him. Mr. Edmonds is adamant that he spoke to a staff member at the Corporation's Customer Excellence Centre, the frontline contact for consumers. He claims the person he spoke to was dismissive of his allegations and told him, "That will teach you for leaving a ticket in the store."

141 While we could not confirm the details of Mr. Edmonds' contact with the Corporation, our investigation did show that it would not have been unusual for Mr. Edmonds to have received this type of treatment from the Customer Excellence Centre staff. Our review of hundreds of complaint records demonstrated that the Corporation typically treats consumers who complain about retailer fraud as the authors of their own misfortune. In the past, those issues that

were pursued further were often simply referred to sales representatives for follow-up during their monthly retailer visits. Very few complaints resulted in a full investigation.

142 The Customer Excellence Centre deals with a very large volume of calls on a daily basis. The Centre is part of the Corporation's Sales and Service Section, and it is responsible for providing support services to retailers and selling lottery products, as well as answering consumer inquiries. From 2001 to October 2006, the Corporation received 21,995 complaints, the majority of which were against retailers, and 722 of which related to allegations of retailer fraud. The Centre recorded a large number of complaints as "generic," meaning the callers didn't give their names. Of 156 calls in 2005-2006 logged as retailer fraud/validation discrepancy complaints, 42 were logged as "generic" with no further follow-up, and closed.

143 A May 27, 2002 Corporate Procedure document instructs Customer Excellence Centre staff on how to address complaints against retailers. It says, in part:

> If a caller says they didn't receive what they paid for, inform the caller that a player is responsible for ensuring they receive what they paid for at the time of purchase. However, we will investigate concerns and follow up with the retailer....

144 An October 2005 document indicates that the Customer Excellence Centre typically would only refer complaints to investigations in the case of a "repeat offender." Many individuals who complained to my Office about the Corporation stated that staff failed to ask them specific questions, seemed disinterested, did not provide information on its process for examining complaints and placed the onus on them to pursue their complaint against the retailer or advised them that it was their responsibility to pre-check or sign the back of their ticket. We also learned that the Corporation did not have a way to track the number of complaints about individual retailers or to cross-reference information between consumer and retailer files.

145 We reviewed records relating to 722 consumer complaints received by the Corporation about retailer fraud and validation discrepancies. Our review revealed that the level of detail captured by Customer Excellence Centre staff varied significantly from one employee to another. The level of initiative also varied. Some staff would attempt to verify retailer transactions, consult the database for retailer complaint history, or contact the retailer for information, while others would take no action in response to similar complaints.

146 In one case, a consumer complained that a retailer denied his ticket was a winner even though a scanner confirmed it was. The Centre's database showed this was the third such complaint against the retailer. The complaint was forwarded to a sales representative, and there is no record of what happened after that. In another incident, recorded March 1, 2006, a consumer was told "once he leaves the store, he accepts the transaction and it is now between him and the retailer." In another incident on Sept. 20, 2006, a consumer received only $10 from a retailer even through the validation slip showed two free tickets had also been won. She was advised by Centre staff that the problem was between her and the retailer.

147 The Customer Excellence Centre deals with two categories of people – the public and retailers. Given that retailers are the lifeblood of the organization, it is not surprising that we discovered that Centre staff paid particular attention to documenting retailer contacts. But when they followed up on complaints about retailers, their inquiries were not particularly robust. In one case, a customer alleged that a retailer was charging commission for prize redemptions. The Corporation's records indicate that a Centre staff member called the store, and the retailer flatly denied the allegation. The data entry notes, "I told him that I was glad to hear it … because charging for redeeming of lottery prizes is a violation of our contract." This is where the inquiry ended. In one case we reviewed, a senior gave a store clerk a ticket for validation in July 2005, but the clerk refused to give it back. When the customer threatened to check her numbers elsewhere, the clerk relented. The ticket was a $20,000 winner. The store clerk was eventually terminated.

148 The Customer Excellence Centre experienced a wakeup call when *the fifth estate* aired Mr. Edmonds' story. From Oct. 25 to Dec. 10, 2006, the Centre received 454 complaints from consumers. The OLG hastily moved to add three new choices to its interactive voice response telephone system: One relating to lost or stolen tickets, one relating to claiming a prize and the third relating to suggestions for improving the Corporation's security measures. In November 2006, it adopted the practice of assigning all validation discrepancies immediately to the Investigations Department. However, not all instances relating to potential retailer fraud are being referred directly to Investigations. A Dec. 19, 2006 information document instructs Customer Excellence Centre staff that complaints involving free tickets or exchange tickets that have not been received by the customer are to be assigned to the Prize Office and "will be monitored, reviewed and escalated by management team as required." This is the very area that has created the most controversy relating to suspicious and disputed claims.

149 KPMG made a number of recommendations for improving the Customer Excellence Centre's systems, including an automatic call logging facility, together

with appropriate monitoring and follow-up processing, defining "key calls," and updating the technology so that calls are recorded and supervisors can listen to calls anonymously for quality assurance and training purposes. The Corporation is investigating the installation of technology that will allow it to record calls. We were advised by a senior official that this had been considered three or four years ago, but a decision was made not to proceed because of the cost.

150 The Corporation is also considering the creation of an "expert" group within the Customer Excellence Centre. Its members would receive additional training, and the telephone system would route incoming calls to the appropriate subject matter expert. This approach was encouraged by KPMG, however, it recommended a separate complaint line that routes appropriate calls to trained staff who can fully diagnose the call and gather preliminary information, and that these calls go directly to Corporate Security and Surveillance.

151 It makes eminent sense that the sales staff in the Customer Excellence Centre be removed as the first line of contact for complaints. Given the need for them to foster their relationship with retailers, requiring them to deal with consumer complaints about those same retailers creates a potential for bias to emerge. The current situation in which sales staff may be asked to follow up on compliance issues is also inherently inconsistent with their primary role. It is inappropriate to place them in such a position.

152 As a result of the deluge of complaints after Oct. 25, 2006, the OLG's Investigations Department (which consisted of three investigators and a manager; a fourth investigator was hired Jan. 8, 2007) had to enlist the aid of a private firm, which has supplied 20 former police officers to assist with investigations at an estimated cost of $20,000 a week. The Investigations Department told us it had received 591 retailer fraud complaints from the Customer Excellence Centre since Oct. 25, 2006, compared to 64 retailer integrity and improper prize complaints received during the entire last fiscal year from all sources. However, it found only two cases where there was a suggestion of retailer fraud, both involving small amounts of money. The Vice-President, Corporate Security and Surveillance indicated that once the Corporation is able to manage its complaint volume, it will reassess its investigative staffing needs. The Corporation also plans to hire three senior managers in the Corporate Security and Surveillance Division, one of those for Investigations.

153 Another failing highlighted by the Edmonds case is the Corporation's investigative record-keeping. The Investigations Department uses a format in recording case information in its database known as "Occurrence Details." Information is entered chronologically and in this way, it is similar to a log or a

police officer's notebook. Investigators are expected to enter information from their notes into the investigations database as soon as possible. At the conclusion of an investigation, investigators are required to prepare a summary or a closing report. In the course of the OPP's investigation of Mr. Edmonds' allegations, the Corporation forwarded the Occurrence Details to the investigating officer in January 2002. It was later discovered that additional entries had been made, which were not part of the record provided to the OPP. According to the Corporation, the hard copy of the Occurrence Details in its file had not been reconciled with the information kept by its Investigation Department at another office location. The missing information was eventually forwarded to the OPP in another format. What the incident revealed, though, is troubling – the OLG's system does not prevent someone from altering the chronology after the fact.

154 While OLG investigators do receive some police training, they have not been held to the standard of record-keeping typically used by police officers and many regulatory agencies. In such organizations, for instance, notes must be taken contemporaneously with events, any amendments must be recorded under a new entry date along with a reason for the addition, and no original notes are ever discarded. KPMG's Phase II report recommended that the Corporation adopt specific investigative documentation standards and guidelines. The Corporation has indicated that it is in the process of documenting procedures for its Investigations Department. The integrity of the Corporation's investigations would be bolstered by a more disciplined approach to investigative record-keeping.

Promotion and Punishment: An Imperfect Fit

155 The OLG's Seven-Point Plan calls for "escalating penalties for retailers who fail to follow correct validation procedures." KPMG has recommended that any retailer "not following specific directives relating to the validation and redemption of tickets may be terminated" – that is, the retailer would lose the right to sell OLG products. However, the Corporation has been tentative about instituting a new compliance regime for retailers. In the past, it has relied significantly on its sales force to assist with identifying and following up with issues relating to non-compliance. Since the *fifth estate* broadcast, sales representatives have been asked to openly observe how retailers validate tickets – including whether customers are being asked to sign tickets. However, this practice would appear to be of limited value, given that retailers can be expected to be on their best behaviour during these visits, which are usually made with advance notice.

156 During our investigation, senior corporate officials emphasized that termination of a retail relationship is a very serious step that has been relatively rare and generally only used as a last resort. We were advised that most terminations have occurred as a result of retailers failing to meet their financial commitments to the Corporation.

157 KPMG noted "it may be beneficial to have periodic compliance reviews of retailers by individuals who are independent of the sales force." With more at stake now, as their retail customers face the very real prospect of termination, the Corporation's sales staff would be placed in an even more untenable position if they were to continue to have a significant compliance role. From a practical point of view, the skill set required to promote products and cultivate relationships with retailers conflicts with the talents needed to ensure proper enforcement of the rules.

158 The Corporation's past approach to monitoring retailers has very much been a conciliatory one. From time to time, the Sales and Service section has engaged in "mystery shopper" campaigns in which retailers were rewarded when "caught" doing the right thing. A similar strategy, minus the rewards, was carried out recently through an external audit to test retailer compliance with ticket validation procedures. However, so far, the OLG has not shown much vigour when it comes to investigations relating to the lotteries.

159 It has been said that "quiet persuasion will usually produce one result – quiet inaction."[7] It is time for the kid gloves to come off. There should be zero tolerance for retailer dishonesty. This should be clearly set out in the OLG's retailer agreements and rigidly enforced. Once dishonesty is established, termination should be immediate, and in most cases permanent.

160 The OLG's greatest stumbling block in this regard, however, is its own culture. It spends so much time promoting its relationships with retailers, it is difficult for it to see itself as the enforcer. We were advised that the Investigations Department has occasionally conducted surveillance of retailers, for instance, to address specific allegations of sales to minors. However, the Corporation has never implemented any systematic program to test retailers. It is now proceeding with caution – and some reluctance – into the enforcement waters. The Senior Vice-President, Lottery suggested to us that it may implement different incentive-based programs and at some point introduce a "penalty equation" to the process. He explained "this is all about helping retailers understand it's important, why it's

[7] From the dedication to Alan Borovoy's *Uncivil Obedience: The Tactics and Tales of a Democratic Agitator* (Toronto 1991).

important … learn the behaviour, use positive reinforcement before we start to say 'you just lost your right to sell lottery tickets.'"

161 With respect, his comments sorely miss the mark. Enforcement should be designed to ensure compliance and protect the public from the risk of potential theft and fraud or other practices that give retailers an unfair advantage. The Corporation's friendly, educational approach is too touchy-feely when a get-tough approach is what is required.

The Trouble With Instant Wins

162 In a second *fifth estate* program on Nov. 22, 2006, the Corporation suffered renewed criticism relating to its instant-win games. Mohan Srivastava, a geo-statistician, told the CBC that in 2003, he had discovered how the Corporation's "Tic Tac Toe" game could be decoded – based on numbers visible on the unscratched face of the ticket – to predict winning tickets with 95% accuracy. He said he had alerted the Corporation, and it had removed the tickets from the market. However, in typical fashion, it had never gone public with this information.

163 The Corporation's records reveal that since its discussions with Mr. Srivastava, it has asked an external auditor to review a number of instant-win games. We found two letters, dated July 7, 2003 and Sept. 22, 2003, and 12 audit reports dating from May 3, 2004 to March 20, 2006 addressing this issue. While these documents confirmed that the games examined complied with OLG specifications, all but one contain the following disclaimer to the effect that the review

> … cannot provide complete assurance that a statistically based method or algorithm for increasing the probability of selecting winning or non-winning tickets, based solely on visual analysis of tickets, does not exist.

164 Despite this, the Corporation has shown no particular interest in pursuing the issue of possible exploitation of instant ticket games further. It saw the Tic Tac Toe flaw as a fluke printing error, and chose not to obtain an extensive report that Mr. Srivastava had prepared. On Feb. 16, 2007, at the CBC's request, he conducted a demonstration using 20 SuperBingo scratch-and-win tickets. Employing his analysis of statistical patterns and specific ticket flaws, he was able to predict winners and losers with a 70% success rate.

165 Mr. Srivastava told our investigators that the methodology employed by the Corporation's external auditors would not catch the problem he has identified and

warned that his statistical examination could be reproduced on a large scale to defraud the lottery system. The Corporation should examine such claims closely. Retailers and other insiders with access to large numbers of tickets are in the ideal situation to take advantage of ticket design defects. This reinforces the need for the Corporation to gather more specific information on the winning patterns of retailers generally, as well as to track individual retailer wins, in order to identify suspicious behaviour.

166 KPMG's Phase III report refers to the ticket flaw revealed by Mr. Srivastava in 2003, and notes that since the incident a number of new preventive procedures have been put in place. These include expanded risk management procedures in the printer's programming department and independent audits to ensure adherence to specific game standards. KPMG recommended the Corporation implement similar risk management procedures for all new game types, security features and/or printing techniques. While not directly addressing the potential for instant-win tickets to be deciphered and manipulated, KPMG suggested that the Corporation consider the periodic need for advanced statistical expertise as part of the ticket design process. KPMG also noted that at present, those responsible for ticket security report through Marketing to the Senior Vice-President, Lottery, raising the potential for security decisions to be influenced by marketing considerations. KPMG recommended that the reporting relationship be redirected away from the Lottery Group.

167 Recently concern has also focused on the Corporation's practice of keeping instant game tickets on the market long after all of the top prizes have already been won. Some jurisdictions remove tickets in these circumstances, and others such as British Columbia and some U.S. states include cautionary disclaimers on their tickets. Unlike retailers, who have ready access to information about prize claims for instant wins, unsuspecting consumers continue to purchase tickets dreaming of big wins, when only smaller prizes remain. Now that the OLG is more attuned to consumer concerns, it has acted to address this issue. Since Dec. 18, 2006, it has changed its policy so that games with "life-changing" prizes of $500,000 and up are removed from the market when the top prize has been won. The Corporation is also contemplating a way for information on unclaimed instant prizes to be viewed on its lottery terminals and has added a disclaimer on the back of new tickets that were ordered in December 2006. Tickets coming onto the market in April or May of this year will carry this message:

> At the time of purchase, some prizes, including top prizes, may have already been claimed. Visit www.OLG.ca for prize details.

168 The new tickets will also refer consumers to the Corporation's website for more information on the prizes available. As well, new validation procedures will soon require that a validation slip be produced for each instant ticket.

New Game Plan: Under Construction

169 So, preliminary changes have been implemented to the OLG's procedures for insider wins, investigations and complaints. The Corporation has also assembled a task force to implement technological improvements. These include the installation of self-serve ticket checkers, customer display modifications, terminal freeze changes and enhanced interactive capabilities. However, many of the initiatives are in the early stages or are still under review. The cost of implementation of the Seven-Point Plan alone is an estimated $11,230,000. The bulk of this expense – $10 million – is attributable to the ticket checkers to be installed at all online retail locations.

Self-Serve Checkers

170 Self-serve ticket checkers allow consumers to check their own online lottery tickets. They are used in a number of provinces and territories in Canada and in at least five U.S. states. The Corporation had launched a pilot project to install these checkers in 250 locations in the summer of 2005, but some retailers expressed concerns that they reduced their interaction with customers and resulted in missed sales opportunities. We were also advised that this initiative did not move more quickly because of cost. But Oct. 25, 2006 changed all that, and it is anticipated that installation of 8,900 ticket checkers will be complete by the end of March 2007. The next step will be for the Corporation to look at ways to adapt the machines to allow consumers to check instant tickets as well. KPMG's Phase III report highlighted concerns with the current technology for validating instant tickets. It recommended that the Corporation move away from the current instant ticket validating technology, which involves dialing up on a phone line. KPMG's review revealed that some of these instant ticket devices are located in back rooms away from customers' view, there is no sound or other signal that a ticket is a winner (except for the receipt printout), and there is no equivalent of the "terminal freeze" for major wins.

Sign Your Ticket

171 The Seven-Point Plan requires retailers to ask customers to sign their tickets before validating them. KPMG's Phase I report had actually gone further,

suggesting that it be mandatory that tickets be signed before they were validated. At first, the Corporation had notified retailers through its November 2006 Retailer Bulletin that tickets had to be signed, but this message was modified in December 2006. Retailers were then told that they must ask customers to sign their tickets, but that they could still validate tickets if the consumer refused. In November, the messaging on the front of online tickets was changed to remind consumers to always sign the back of their tickets. In November and December 2006, the Corporation's sales staff visited retail outlets to provide training on the new validation process.

172 The Corporation engaged a marketing company to measure retailer compliance with the new procedures. The company visited 1,949 retail outlets in London, Ottawa, Hamilton/Burlington, and Toronto between Dec. 4, 2006 and Jan. 5, 2007. The audit found that 77% of retailers did not check the back of the ticket when it was submitted for validation and that 78% did not request that the ticket be signed prior to validation. The Corporation is considering having the company conduct a second audit.[8] The Vice-President, Sales and Service suggested that making signatures mandatory would create operational problems for store owners because of the additional time it would take. One of the Directors of Lottery Marketing told us lottery tickets are a "low consideration purchase" and suggested that any attempt to impose additional requirements on consumers could have an adverse affect on sales.

173 The officials we interviewed differed on their understanding of the OLG's past practice with respect to signing tickets as a means of consumer protection. One official suggested that the Corporation had always encouraged this. Another commented that it had not asked consumers to sign their tickets for 30 years, and expressed concern about a backlash. One director observed, "Did I ever sign the back of my ticket before *the fifth estate*? No, but do I do it now? Yes, I do."

Customer-Facing Screens

174 In its Phase II report, KPMG recommended repositioning all retail terminals so that it would be easy for ticket holders to observe their tickets being checked. Between Nov. 13 and Dec. 15, 2006, the Corporation's sales force inspected Customer Display Units at all retail outlets and found only a few required readjustment. We were told that in the process of installing ticket checkers, the Corporation will assess both terminal and Customer Display Unit positioning. The "freeze" now occurs for online wins of $10,000, consistent with the insider win threshold.

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[8] It has estimated that the cost for retail audits will be in the range of $300,000 to $500,000 per year.

175 The Corporation is planning several additional enhancements to its Customer Display Unit screens. On Dec. 5, 2006, the Corporation's Executive approved display of all prize amounts of $1,000 or less. The Big Winner video, jingle and text message have also all been expanded, providing more signals to customers that they have won. The font size of screen messages is also being increased for all validation messages. All of these measures were to be in place by March 2007.

Public Education Campaign

176 Public education activities launched by the OLG since November 2006 include:

- "sign your ticket" decals, which appear on Corporation merchandise inside stores;
- "check your lottery tickets/always sign ticket back" messaging on online tickets;
- new messaging on Customer Display Units;
- "sign your ticket/check your ticket" advertisements at play stands (i.e., where selection slips are filled out);
- "silent seller" strips (signs) which are placed inside the unit used to display instant tickets;
- the introduction of a 15-second "sign your ticket/check your ticket" video clip; and
- tear pads (flyers), which identify sources where consumers can check their numbers.

177 The Corporation has also placed ads encouraging consumers to sign their tickets in 40 Ontario daily newspapers, which ran on Dec. 18, 2006, and Jan. 18, 2007, with the message "Play with confidence." More advertisements are being considered for newspapers, radio and television. The Corporation has retained an advertising agency and public relations firm to assist it with its media messaging. However, it is already planning to scale back on its consumer messaging. Beginning Jan. 15, 2007, the OLG began to limit the appearance of the "sign your ticket/check your numbers" messages on online tickets to once a week. Next, it plans to place ads in newspapers and other media relating to self-serve ticket checkers – how they work, and where they are available. The Marketing division

has ordered 1-2 million ticket wallets (vinyl envelopes) that are used by some players to retain their selection slips and/or tickets, which will carry the slogan "Sign Your Ticket" and which retailers will distribute. In the long term, the Corporation is also considering placing a "Sign Your Ticket" logo permanently on its online ticket stock and instant tickets.

178 The Corporation will measure the effectiveness of its public education initiatives. It already uses a research firm to assess consumer behaviour, attitudes, and support for lotteries. It is considering having this company conduct a follow-up survey to gauge public awareness of the changes. Another idea being considered is to sample retailers and have them audit consumer behaviour.

Customer Feedback

179 The Corporation has undertaken a number of initiatives to facilitate public suggestions for improvement. In addition to contacting the Customer Excellence Centre between 8:30 a.m. and 8:00 p.m., seven days a week, customers can now reach the OLG through e-mail addresses created specifically for suggestions, questions, concerns and reporting lost or stolen tickets. The Corporation's goal is to respond to 99% of its inquiries within seven days.

180 With all the frenzied changes taking place at the Corporation, the question remains, has it learned its lesson? What will happen if another retailer shows up to report a win and can't answer basic questions about the ticket? How will the Corporation respond to another Bob Edmonds?

Hindsight is 20-20

181 One of the Corporate officials we spoke to during our investigation indicated that when he heard about the Edmonds case years ago, his first reaction was that the Corporation should pay Mr. Edmonds "sooner rather than later," if he was indeed the genuine winner. But business and legal decisions were made to the contrary, and the rest is history. The Vice-President, Corporate Security and Surveillance, who was not with the Corporation at the time Mr. Edmonds initially complained, remarked that "hindsight's always fantastic." His advice now would be, "Give him the $250,000 and go after [the retailers]."

182 The Chief Executive Officer also acknowledged that the Corporation could have done better and could have been "more aggressive in trying to ferret out what had transpired." When asked, "If Mr. Edmonds came to the organization today, would his experience be different?" the Chief Executive Officer offered:

> To say that we've all had sensitivity training would be an understatement… What we have learned is we need to be more sensitive and put more time and effort into it."

183 The Corporation did recently settle a dispute over a Pro-Line sports lottery that might otherwise have resulted in costly and prolonged litigation. In that case, the OLG had inadvertently transposed the odds for a soccer game for a period of nine hours. The complainant had bet on the game during that time. When he went to collect his winnings, he was told his ticket was void. At a pre-trial meeting, the presiding judge told the Corporation that its case was vulnerable, as the game rules were not readily available, so the average person would not be aware of the rules. The Corporation settled for $65,000, and as a result of this case, it now publishes all Pro-Line sports rules on its website.

184 However, the Corporation still seems to treat such complaints as one-offs. It requires complainants to sign confidentiality statements when they settle their disputes, and does not post information about errors on its website. At least one other Canadian counterpart, the Western Canada Lottery Corporation, ensures that error information is posted on its site. This would appear to be a simple, transparent and reasonable practice.

185 While the OLG deserves some credit for finally taking some decisive action to address the fallout from *the fifth estate*, there is a very real danger that some of its initiatives will result in mere window dressing. It continues to exhibit a reluctance to get tough when it comes to retailer compliance issues – as its own research shows, most retailers still (as of January 2007) seem to resist even asking people to sign their tickets. The OLG still appears not to recognize that controls need to be designed and enforced to protect the public and the integrity of the system. Compliance cannot be treated as an option merely to be negotiated with retailers.

Promises, Promises

186 The Ontario Lottery and Gaming Corporation is very good at making promises – after all, it is well versed in convincing Ontarians to follow the dream of the big win. As the Vice-President, Sales and Service commented, "my job is about celebrating the win." So when the Corporation boasts that its security is the most stringent in North America, such statements should be taken with a grain of salt. Unfortunately, prior to Oct. 25, 2006, the Corporation had fallen into the trap of buying into its own hype, instead of looking inward with a critical eye. It has finally awakened to the reality that it is expected by the public – and by the courts – to take an active role in safeguarding the lottery system from fraud and theft.

187 One OLG official commented to our investigators:

> We will be better because of *the fifth estate*, we will be better because of KPMG and we will be better because of the Ombudsman's review…

The Corporation is clearly trying to say all the right things in order to convince the public that its commitment to improving the security of the lottery system is a reality, not just a sales pitch. Whether this commitment will ultimately be fulfilled remains to be seen.

188 In order to ensure that the focus on implementing proper controls is not simply a passing fancy, the responsibility for review of security issues relating to insiders needs to be assigned to a senior level of the organization. The Corporate Security and Surveillance Division seems the most logical fit for this. The momentum for change must not be lost in a series of task forces or committees. In its Phase III report, KPMG recommended that the Corporation consider creating a position focused on managing the comprehensive risks of lottery activities, first focusing on instant-win tickets and then expanding over time. It is clear that there must be leadership and direct accountability to ensure that the lessons learned from the Edmonds case are not lost. The Chief Executive Officer has already recognized this necessity, noting, "we need to embed within the Lottery Division a resource or resources whose sole purpose is to essentially continue to review the status quo."

189 I am not convinced, however, that the public can rely on the Corporation alone to ensure that real reform takes place. The danger is too great that the OLG will continue to fall back into its old habits of coddling retailers and dismissing consumers' legitimate complaints.

Why Not Just Ban Them?

190 One option the Corporation has not considered to counteract retailer theft and fraud is to ban retailers from participating in lotteries altogether. It remains confident that its security measures, which include internal and external audits of its processes and games, are sufficient for the most part to ward against insider fraud. Our review of other jurisdictions confirms that the overwhelming majority do not have any special restrictions on retailer play. A number of U.S. jurisdictions prohibit lottery employees from playing, but not retailers. We only found one jurisdiction, Argentina, which banned retailers outright from participating in lotteries, and the sales structure in that country appears to be significantly different from Ontario's. In British Columbia, retailers are restricted

from playing lottery games while on duty, and their claims are also subject to additional review procedures.

191 Banning retailers from buying lottery tickets altogether might appear to be an obvious solution, since it would remove any possibility of them claiming prizes. However, OLG officials have questioned the practicality of this approach, suggesting that a ban would only serve to force retailer lottery playing underground. They argue that British Columbia's approach would be virtually impossible to police, as retailers could simply ask others to present their tickets for them. While the Corporation could try to identify relatives of retailers as insiders, the list of friends and acquaintances who could potentially be asked to redeem winning tickets on their behalf is endless. The retail employee population is also large, transient and difficult to quantify with accuracy. There is also the question of fairness in punishing thousands of retailers for the crimes of a few.

192 The idea of an outright ban on retailer lottery playing should not be dismissed out of hand, but I am satisfied that other measures for ensuring the honesty and integrity of the lottery system should be explored first.

Rebuilding Trust: The Retailer Question

193 The Corporation does not pre-screen those people who apply to sell OLG lottery products, or concern itself with questions of retailers' past conduct or personal suitability. As the Vice-President, Sales and Service put it to us:

> We don't believe that's in our responsibility area... there's human rights issues and all sorts of things...[there] might be very large issues for which we have just no responsibility.

194 The Terminal Selection Guidelines in use at the OLG focus on profit potential. To qualify for consideration as an on-line retailer, a store must generally have sold instant-win products for a minimum of 26 weeks and must have high sales. There are exceptions for retailers with high profit potential, those in remote areas, or with seasonal businesses. A letter of credit or security deposit is also required. Once appointed to sell OLG products, retailers are entitled to commissions on sales and cash redemptions.

195 While the Corporation does not carry out any form of credit or criminal reference check when an application is made by a retailer, retailers convicted of offences under the *Retail Sales Tax Act* can have their right to sell OLG products

suspended. Similarly, retailers who sell to minors in contravention of the *Ontario Lottery and Gaming Corporation Act, 1999* may face penalties.[9] Failure to meet financial obligations is also grounds for suspension. The Corporation has generally used a three-strike approach: The first compliance issue results in a one-week suspension; the second in a one-month suspension and the third in a review of the retailer's right to sell lottery products.

The Retailer Contract

196 The Corporation's standard-form contract with retailers states that:

> The good reputation of OLG with the general public is essential to the viability of OLG and the mandate conferred by law, and ... the good faith and proper conduct of the retailer under the terms of the contract are essential to the good reputation of OLG and confidence of the general public in OLG and OLG's products and operations.

197 The Contract makes it clear that the retailer is an independent contractor only, and not an agent or employee. The Contract may be terminated by either party at any time on 30 days' notice in writing. It is automatically renewed unless terminated on or prior to December 31 each year. The Corporation has the right to immediately terminate a contract in a number of circumstances, including if the retailer fails to follow its instructions, becomes insolvent or commits an act of bankruptcy, or engages in conduct or permits an event or occurrence which the Corporation considers prejudicial to its interests or reputation. Retailers are also required to indemnify the Corporation from any loss or claims. Under the title "Promotion" in the Contract, it is noted that the retailer must give precedence to the promotional and merchandising materials relating to OLG products, and to do nothing that might diminish sales of its products or tarnish its reputation.

198 The standard retailer contract contains strong language and confers substantial discretion on the Corporation to terminate its relationship with retailers on very broad grounds. But the Corporation has not considered it appropriate to engage in any pre-assessment of retailers' qualifications. The Senior Vice-President, Lottery told us:

> In essence, because we are a Crown corporation and there's this whole concept of equality and fairness and there's so many big challenges, most retailers feel this is their right to sell lottery tickets ... Today that's sort of reality for us, we don't have a very good basis for saying no ... You

[9] s. 13, Ontario Lottery and Gaming Corporation Act, 1999.

request the ability to sell, as long as you're going to sign the contract, we will give the opportunity to sell.

199 But when members of the public see that familiar OLG triangle symbol in a retailer's window, they expect that the Corporation will stand behind its products and those who dispense them. The courts have clearly recognized that the OLG owes the public a duty of care to protect them from the risk of potential theft or fraud. The fact that the retailer is independent from the Corporation does not relieve the Corporation from responsibility for the retailers of its products. Surely they should at least be required to meet some minimum standard of integrity before they are given the privilege of representing this Crown agency.

Protecting the Public Trust

200 Many other jurisdictions recognize that although the vast majority of retailers are honest and law-abiding, the obligation to ensure public trust and confidence as well as the integrity of the lottery system requires proper checks and balances to guard against theft or fraud or other insider advantages.

201 In Manitoba, as part of a Memorandum of Understanding between the Manitoba Lotteries Corporation and the Manitoba Gaming Control Commission, the Commission conducts criminal background checks on retailers when they apply for lottery terminals. The Manitoba Lotteries Corporation retailer contract provides for termination if a licensed retailer or employee is convicted of a crime involving fraud, theft, misrepresentation, moral turpitude or any gambling-related offence. In Alberta, if a retailer is convicted of a crime involving fraud, theft, misrepresentation, moral turpitude or any gambling-related offence, this may result in termination of the right to sell lottery products.[10]

202 We reviewed 17 U.S. jurisdictions that run lotteries to see what approach they take to retailer screening. We found that in 16 of the 17 states, officials screen retailers through criminal record checks, usually coupled with credit checks. Most jurisdictions do not screen individual employees, but leave this to the due diligence of retailers.[11] Some states also require fingerprinting. In Ireland, retail lottery agents are subject to termination if convicted of an offence that renders them unfit, and five Australian lotteries we contacted also pre-screen applicants for criminal convictions. Under the New South Wales *Public Lotteries Act, 1996*, the Minister may withdraw the appointment of a retail agent if he/she is of the opinion that the integrity or apparent integrity of a public lottery is likely to be

[10] Section 4.4.1 of the *Alberta Gaming and Liquor Commission Lottery Ticket Centre Policy Handbook*.
[11] The State of New Jersey pre-screens retailers and their employees.

seriously prejudiced because of the agent's criminal record, character or reputation. Under the Queensland *Lotteries Act, 1997*, a retail agent agreement may be terminated where the agent has been convicted of an offence related to lotteries or gaming, or an indictable offence. The Act also provides for investigation, including criminal history checks, of lottery agents to determine if they continue to be suitable. New Zealand Lotteries also undertakes a criminal record and credit check of prospective lottery retailers.

203 Interestingly enough, after the *fifth estate* program on Oct. 25, 2006, the Solicitor General of British Columbia asked that province's Gaming Policy and Enforcement Branch to investigate and report on the integrity of the B.C. Lottery Corporation's ticket retail network. Although lottery retailers there are not currently required to register with the Branch, it is responsible for the overall integrity of gaming, and has the authority to investigate the integrity of lottery schemes. One of the recommendations coming out of that review was that the Gaming Policy and Enforcement Branch should be responsible for registering all lottery retailers in B.C. Retailers would then be responsible for the actions of their employees. Another recommendation was that retailers be subject to financial and criminal record checks. The regulations under British Columbia's *Gaming Control Act* are now being amended to implement these recommendations.

204 In Ontario, the *Gaming Control Act, 1992* provides that the Alcohol and Gaming Commission of Ontario may refuse to register or renew a supplier's registration, if there are reasonable grounds to believe that the applicant will not act as a supplier in accordance with law, or with integrity, honesty, or in the public interest, having regard to past conduct (s.10, *Gaming Control Act, 1992*). According to the OLG, vendor registration is one of the principal tools used by the Commission to regulate persons who work for or supply goods and services to its casino-style gaming operations. The Commission classifies vendors based on their ability to influence or control the operations of a gaming site. Those in a position to influence or control operations of a casino are subject to greater scrutiny. Gaming registrants are subject to investigation, including fairly extensive criminal background checks. The Commission has an adjudicative function to address issues such as disputed registration refusals, as well as various enforcement powers including the ability to freeze assets in appropriate cases. However, at present it does not regulate the lottery side of the OLG, which remains essentially self-regulated.

Protesting Too Much?

205 The option of placing lotteries under regulation similar to the wider gaming industry is not particularly palatable to the OLG. The Chief Executive Officer dismissed this possibility. He explained to my investigators that lotteries and gaming are treated differently in Ontario because of history and practicality. While lotteries developed as government-run, gaming emerged from the private sector, and has traditionally been subject to regulatory oversight. In Canada, he noted, the Criminal Code still requires that government be responsible for directing gaming operations. The Chief Executive Officer contrasted gaming, where vast amounts of cash change hands, with lotteries where "tickets don't cost a whole lot" and don't involve a "real risk and real exposure." He noted that while "the fundamentals of the business are the same … in terms of operations they're very, very different."

206 The Chief Executive Officer expressed the view that criminal reference checks of retailers would not be of much benefit. He gave the example of the retailer in Mr. Edmonds' case who, in another capacity, had actually undergone a criminal reference check through the Alcohol and Gaming Commission of Ontario. He suggested that unless a full background check is conducted, a criminal record check is not of much value. He noted:

> … some of these measures are more about appearance than substance, so if you're not going to take fingerprints, don't bother giving me a criminal record check … The kinds of background investigations that were done at the AGCO for direct gaming … those are useful because they deal with intelligence information, they deal with charges, young offenders … When you get investigated for a gaming licence, a key position, it is an exhaustive process, and even there, it is no guarantee, it's the best bet going, but it's no guarantee.

207 The Chief Executive Officer provided a number of reasons why criminal record checks would not be workable. He suggested that given the high staff turnover in the retail business, such a system would be difficult to administer and might raise employment relations and confidentiality problems, if the Corporation were to reveal that a retailer's employee had a criminal record. He also noted that there would have to be some form of appeal mechanism for retailers. He questioned the Corporation's authority to conduct such background investigations and noted they could not be done retroactively on retailers already under contract. He even acknowledged that the Corporation conducts criminal background checks of its own staff – but said he did not see the value of doing it for retailers.

208 The OLG does not appear to be open to exploring the types of restrictions and controls in place in other jurisdictions, including Manitoba, B.C. and Alberta, which would serve to better protect both the public and the integrity of the lottery system. The fact that the Chief Executive Officer spent considerable time rejecting the option of retailer regulation and justifying the impracticalities of conducting criminal reference checks is reflective of the corporate culture. It is a culture based on developing and maintaining good customer relations with retailers, promoting sales and celebrating wins. Compliance, enforcement and protection of the public continue to take a back seat and are dealt with as afterthoughts rather than primary responsibilities of a Crown corporation that is obligated to protect the public.

209 The role of regulator does not mesh with the OLG's business or its image. While it is undeniable that criminal and financial reference checks do not necessarily prevent or even accurately predict the likelihood that an individual will commit lottery-related crime, they have widely been used as indicators throughout industry and the public sector of basic integrity and honesty. They are a litmus test that may serve to weed out those that have demonstrated by their past conduct that they cannot be trusted.

210 The Corporation's attitude when it comes to criminal reference checks and the prospect of regulation does not serve the public interest well. It reflects the inherent conflict that exists when a Corporation dependent on retailers for its profits is expected to take on a disciplinary role as well.

Refereeing the Game: The Case for a Regulator

211 The Corporation has a long, sorry history of inaction in the face of a clearly demonstrated risk of retailer theft, and is clearly conflicted in its role of partner in profit with retailers. Given all this, it is time to give serious consideration to the necessity of placing protection of the public and preserving the integrity of the lottery system into outside hands.

212 I am mindful that, for retailers, the prospect of having to subject to a full-blown regulatory scheme might be daunting. However, we heard serious concerns from retailers, OLG officials and the Ontario Convenience Store Association about the damage that *the fifth estate's* revelations and the widespread public fears they engendered had done to retailers' reputation and morale. Instituting a formal system of regulation would serve to instill greater public confidence in the lottery system generally and with respect to individual retailers. The public would know there was a system of quality assurance and would have recourse to an outside organization to express their concerns.

213 Expanding the mandate of the Alcohol and Gaming Commission of Ontario to oversee the integrity of lotteries and ensure compliance enforcement among retailers is one option which could be considered by the Government to inject external regulation and oversight into the lottery system.

214 Under the *Criminal Code of Canada* (sections 206 and 207), the provinces are assigned the responsibility to operate, license and regulate legal forms of gaming. The *Gaming Control Act, 1992* establishes a registration system for those in the gaming industry. Even vendors supplying goods or services relating to direct gaming facilities must be registered with the Alcohol and Gaming Commission of Ontario. The Commission is responsible for regulating legalized gaming and for the issuance of lottery licences to religious and charitable organizations. Retailers wishing to sell break-open lottery tickets on behalf of charitable organizations in Ontario must be registered with the Commission, and are required to undergo a criminal and credit reference check. According to the Corporation's website, the Commission ensures any participants in legal gaming operations, including vendors, satisfy high standards of honesty, integrity and financial responsibility.

215 Given that the Commission is already in the business of ensuring honesty and integrity in the gaming business, it would be a logical fit to ensure proper regulation and oversight of lottery retailers. It has the broad investigative authority and the balancing appeal mechanisms to ensure thorough and fair assessment of registrants. Another option would be to develop a new, separate regulatory system that takes into consideration the unique nature of the lottery business.

The Road to Reform

216 Regardless of their legal relationship to the Corporation, retailers represent the public face of the Ontario Lottery and Gaming Corporation to the citizens of Ontario. The cavalier system by which retailers are granted the right to sell lottery tickets based on their ability to generate profit ignores the duty of care that the Corporation owes to the public. The situation will only become worse as the Corporation moves to implement its Seven-Point Plan and other reform initiatives while at the same time attempting to maintain its good relationships with its valued retailers.

217 A robust regulatory and enforcement scheme would ensure that the rules in place to protect the public and the integrity of the lottery system are clear, defined and cannot be watered down. It would also ensure that the rules are properly enforced

in an objective way, with real consequences for those who break them – and that checks and balances are in place to minimize the risk of theft, fraud and other abuses from occurring in the first place.

218 An important aspect of any regulatory framework would include mandatory registration, with retailers being subject to investigation, including criminal record and background checks. Retailers would have to demonstrate they met an objective standard of honesty and integrity before being granted the right to sell lottery tickets to the public and would be subject to having that privilege revoked based on any infractions that place their integrity in doubt.

Codifying Decency

219 To be effective, any regulatory scheme should entrench a Code of Conduct for retailers that makes clear the expectations placed on them, as well as the penalties for violations. The Code could address issues such as the requirement to ask customers to sign tickets. Retailers who broke the Code would be subject to sanctions through the regulatory body. The Code could also impose additional controls to address the fact that retailers, as a number of statistical experts suggested, have a natural advantage over other players through their exposure to the lottery system.

220 Retailers are privy to a great deal of information regarding the precise odds of winning particular games, and the number of unclaimed prizes. While the Corporation's training materials suggest that retailers share this information with customers, it is not clear to what extent this is actually done. Since Oct. 25, 2006, the Corporation has taken steps to level the playing field somewhat to mitigate the retailer game advantage. On Dec. 1, 2006, it began posting information about the number of unclaimed prizes on its website. The Corporation has also redesigned some of its reports containing prize information, making them easier for retailers to print off and post for consumers. However, to further mitigate retailer advantage in this area, the Code of Conduct could include express requirements relating to disclosure of information to consumers.

221 The Corporation stands behind its retailers, emphasizing that the vast majority are honest. While its support for its partners in the lottery system may be admirable, it is naive. This attitude has led the Corporation to discount warning signals when it comes to retailer dishonesty. One feature that should be incorporated into any regulatory model and compliance mechanism is regular integrity testing – essentially a more formal and effective version of the "mystery shopper" trials that the Corporation has used in the past.

Putting Integrity to the Test

222 Integrity testing has been used for decades in many contexts, and is commonly employed by law enforcement agencies to positive effect. Given the nature of the lottery business, using a system of external "secret shoppers" would be particularly beneficial. These people, posing as lottery customers, could engineer situations in which a retailer's reactions would be put to the test. This method could be employed to follow up on specific concerns relating to retailer misconduct or on a random basis. For example, a mystery shopper could pretend to be an indigent elderly individual who happens to have a winning instant ticket for a significant amount of money and requests guidance from the retailer. The object of the exercise would be to determine how the retailer deals with the situation.

223 While integrity testing is primarily designed to deal with dishonesty, covert visits to retailers could also be used to determine whether or not retailers are complying with the Code of Conduct. The mere knowledge that retailers might be visited by one of these undercover agents would serve as an excellent means of deterrence and publication of the results of visits would provide a constant reminder of the importance of respecting the rules.

Failing the Smell Test

224 Another area that requires a significant trust facelift is the OLG's practice of paying out millions of dollars to claimants in ridiculously suspicious circumstances – cases that "smell" bad, but where there is simply not sufficient proof of theft or fraud. It has been suggested that in cases in which the Corporation is suspicious of a claimant, it could advertise that a jackpot has been won from a ticket generated in a particular location, and see if the real winner comes forward. This approach was rejected by the Corporation in the past out of fear that it would spark a flood of claims. Although this may be a concern to be managed, it is important to remember that the retailer couple who made away with Mr. Edmonds' winnings ultimately came to his attention from an article in the local newspaper.

225 The Corporation sometimes advertises when it has unclaimed prizes. By the same token, advertising could become an important part of the Insider Win process – insider claimants could be made to wait for an ad to run its course, in case someone comes forward to contest the win. This could be incorporated into the Corporation's policies, rules and retailer contracts or as part of a regulatory scheme.

226 As well, serious consideration should be given to establishing an external process for the investigation and adjudication of suspicious or disputed claims. Prize claimants in these circumstances could be required to testify under oath and all the facts could be formally considered. Although such a formal mechanism would require a legislative foundation, and may involve some cost and time, it would prove a very useful and effective last resort in cases where a claim is extremely suspicious and a substantial amount of money is at stake. The advantage to this approach would be that it would serve to strengthen the integrity of the prize payout system and would provide an effective recourse for citizens who feel they have evidence that their winnings have been stolen from them. Future aggrieved consumers should not be left to resort to suing the OLG.

Moving Forward: Rebuilding Trust

227 Playing the lottery is about much more than money – it is about trust. As the Chief Executive Officer commented to us:

> What makes the business unique: The business is built upon confidence, trust, integrity … At its simplest level, you give me a dollar, I give you 50 cents and you smile; you give me a dollar, I give you 50 cents and you smile – and we keep doing that and you enjoy it, only as long as you believe one of these times I'm going to surprise you and give you $100. The moment you don't think I'm going to do that, it's not fun and you don't play.

228 The Chief Executive Officer stressed that the steps the Corporation has recently taken are a beginning, not an end. I believe that the Corporation has a powerful incentive to reform its processes – the need to retain the trust of the citizens of Ontario. The Chief Executive Officer has given his commitment to do whatever it takes to set things right. He noted:

> I can't put a price on retaining and maintaining and enhancing the public's trust, so without sounding like I'm a spendthrift, we will spend whatever is required to get this back to where it should be because it's an investment…

229 The OLG is intent on being back to "where it should be" as an industry leader. However, it has a long distance yet to go. It is an embarrassment that the failings of the lottery system were not revealed as a result of the Corporation's own introspection, but through the efforts of investigative journalists. The Corporation

ignored court decisions which confirmed its obligation to consumers and ignored the warnings and recommendations of its own officials regarding the need for tighter security measures to safeguard the public and the integrity of the system. When it did make security improvements in the past, it did so with no sense of urgency. Instead of increasing vigilance, it sought to avoid responsibility. Instead of proactively assessing the extent of insider wins and systematically addressing complaints, it chose to focus money and time on marketing a new identity, promoting its products, and protecting the interests of its retailer partners. The OLG knew retailer fraud and theft was a reality and had the opportunity to act to strengthen lottery security. But instead it chose the path of apathy.

230 With that in mind, I have arrived at a number of opinions and made recommendations which I believe will assist the Corporation in meeting the goal of re-earning the public's trust and truly being a leader in the lottery field. The most significant recommendations relate to the introduction of a regulatory scheme that would place responsibility for ensuring the integrity and honesty of retailers into the hands of a neutral and objective investigative body. The OLG itself is an insider in the lottery scheme. It is in a position of inherent conflict, which must be addressed and minimized.

Opinion

231 It is my opinion that the Ontario Lottery and Gaming Corporation has failed to take adequate steps to protect the public from fraud and theft in Ontario's lottery system. In accordance with subsections 21(1)(b) and (d) of the *Ombudsman Act*, I find that its conduct is unreasonable and wrong.

232 It is also my opinion that the Ontario Lottery and Gaming Corporation has failed to properly respond to complaints from the public concerning the lottery system. In accordance with subsections 21(1)(b) and (d) of the *Ombudsman Act*, I find that its conduct is unreasonable and wrong.

Recommendations

The Government of Ontario

1. To instill public confidence in the lottery system, the time has come to impose a regulatory regime in this area under an oversight body with investigative authority, similar to the system that currently applies to gaming. Accordingly, I recommend that the Ontario government implement a regulatory scheme for lotteries with the following characteristics:

    a. a Code of Conduct for retailers, the breach of which would lead to sanctions up to and including termination of registration;

    b. retailer registration involving background criminal investigation;

    c. revocation of registration for breaches of the legislation, as well as criminal or provincial offences;

    d. an adjudicative system to address issues such as retailer registration denials;

    e. broad investigative and remedial powers, including the power to freeze assets;

    f. a system of integrity testing, employing "secret shoppers";

    g. waiting periods and advertising requirements to apply in the case of insider wins; and

    h. a process for investigation of complaints against retailers.

    Section 21(3)(g) *Ombudsman Act*

2. The Government of Ontario create an adjudicative process to deal with disputed and suspicious prize claims.

    Section 21(3)(g) *Ombudsman Act*

3. The Government of Ontario report back to the Ombudsman in six months regarding its progress on implementing recommendations 1 and 2.

    Section 21(3)(g) *Ombudsman Act*

Ontario Lottery and Gaming Commission

Cultural Change

4. In order for real change to occur, the Ontario Lottery and Gaming Corporation must strengthen and improve on its commitment to fulfil its obligations to the public and preserve the integrity of the lottery system by taking steps to prevent against retailer theft and fraud. Accordingly, I recommend that the OLG place on its website a public statement confirming its commitment to ensuring that it meets its duty of care to the citizens of Ontario to take all reasonable steps to ensure the integrity and honesty of the retailers that serve the lottery system.

   Section 21(3)(g) *Ombudsman Act*

KPMG Recommendations

5. The Corporation has expended more than $644,000 so far on the review being conducted by KPMG, and KPMG has made some 40 recommendations aimed at improving the Corporation's lottery process. These efforts should not be allowed to languish. Accordingly, I recommend that the Ontario Lottery and Gaming Corporation publish the results of the KPMG audit and move to review and implement the recommendations made by KPMG for improvement of its services.

   Section 21(3)(g) *Ombudsman Act*

6. I recommend the OLG establish an action plan and time frames for implementing KPMG's recommendations and make this available to the public.

   Section 21(3)(g) *Ombudsman Act*

7. I recommend the OLG designate a position within the organization separate from Sales and Services, at a senior level, with responsibility for review and implementation of the KPMG recommendations, and for ongoing review and implementation of initiatives focused on improvement of the security and integrity of the Corporation's lottery systems.

   Section 21(3)(g) *Ombudsman Act*

Insiders

8. In addition to reviewing and revising the Insider Win Policy as recommended by KPMG to better define insiders, the Corporation should be ensuring that its retailer contracts clearly spell out the obligations relating to retailers and their employees when redeeming their own tickets. It should adopt a zero-tolerance policy when it comes to retailer dishonesty, and retailer contracts should provide for automatic termination for dishonest conduct. Accordingly, I recommend that the OLG continue to treat retailers and their employees as insiders.

   Section 21(3)(g) *Ombudsman Act*

9. I recommend that the OLG amend its retailer contracts to specifically require that retailers identify themselves when redeeming their own tickets, and ensure that their employees are aware of this obligation.

   Section 21(3)(g) *Ombudsman Act*

10. I recommend that the OLG make other insiders aware that they are responsible for identifying themselves when redeeming their own tickets through the Corporation's Prize Office.

    Section 21(3)(g) *Ombudsman Act*

11. I recommend that the OLG amend its retailer contracts to specifically require retailers to undertake to train their staff on the Corporation's requirements.

    Section 21(3)(g) *Ombudsman Act*

12. I recommend that the OLG amend its retailer contracts to make it clear that retailers are subject to a zero-tolerance policy with respect to retailer dishonesty and ensure that this is adhered to.

    Section 21(3)(g) *Ombudsman Act*

Prize Office

13. The Corporation should be thoroughly reviewing not only the questions asked of winners as suggested by KPMG, but also the methods of interviewing. I recommend that the Ontario Lottery and Gaming Corporation develop a more

structured method of conducting Prize Office interviews and cease the practice of "hinting" to claimants about purchase and validation details.

Section 21(3)(g) *Ombudsman Act*

Complaint Handling

14. I recommend that the Ontario Lottery and Gaming Corporation cease its practice of using its sales force staff to follow-up on compliance issues.

    Section 21(3)(g) *Ombudsman Act*

15. I recommend that the Ontario Lottery and Gaming Corporation instruct its sales force staff to direct security issues it identifies in the field to the Corporate Security and Surveillance Division.

    Section 21(3)(g) *Ombudsman Act*

16. I recommend that the Ontario Lottery and Gaming Corporation record complaint information in a way that makes it possible to track complaints against individual retailers.

    Section 21(3)(g) *Ombudsman Act*

17. I recommend that the Ontario Lottery and Gaming Corporation consider implementing technological changes to ensure that it has an integrated complaint database and the capacity to automatically populate data files to allow for cross-referencing of information.

    Section 21(3)(g) *Ombudsman Act*

Corporate Investigations

18. In addition to KPMG's recommendations around documenting the investigative process, I believe that the Corporation's investigations require more rigour. Accordingly, I recommend that the Ontario Lottery and Gaming Corporation ensure that its investigators are trained in and follow proper investigative record-keeping practices, including keeping contemporaneous notes, not altering entries and not destroying investigative notes.

    Section 21(3)(g) *Ombudsman Act*

19. I recommend that the OLG ensure that all complaints relating to retailer misconduct are referred for investigation to the Corporate Security and Surveillance Division.

Section 21(3)(g) *Ombudsman Act*

Statistical Record-Keeping

20. The Corporation has not kept statistical records of insiders and analyzed these to determine if there are signs that retailers or other insiders are winning prizes in a disproportionate amount. Such analysis could serve as a useful tool in identifying areas that require closer security supervision. Accordingly, I recommend that the OLG keep and analyze statistical information on the number of insiders winning its various lottery products, the playing habits of insiders, and on the win history of individual insiders.

Section 21(3)(g) *Ombudsman Act*

21. I recommend that the Ontario Lottery and Gaming Corporation explore methods of gathering more accurate information concerning insiders, including surveys and requirements that insiders, such as retailers, regularly identify the names of their employees to the Corporation.

Section 21(3)(g) *Ombudsman Act*

22. The Ontario Lottery and Gaming Corporation should ensure that prize claimants are checked against the Corporation's records of insiders and that individual win history is consulted whenever an inside winner makes a claim for payment through the Corporation.

Section 21(3)(g) *Ombudsman Act*

Implementation

23. I recommend that the OLG report to the Ombudsman in writing on a quarterly basis on its progress in implementing these recommendations, until such time as all of the recommendations have been successfully implemented.

Section 21(3)(g) *Ombudsman Act*

Responses

233 I met with both the Minister of Public Infrastructure and Renewal, David Caplan, and the Chief Executive Officer of the OLG, Duncan Brown, to review the government's and the OLG's responses to my report. I am pleased to report that both Minister Caplan and Mr. Brown were unreserved in their acceptance of my Office's findings and expressed their firm commitment to implementing all of my recommendations on a timely basis.

234 Minister Caplan wrote in his response to my report that he is committed to moving forward on the recommendations and that the Ministry will report back to my Office in six months on the progress he has made. He also acknowledged the need to place oversight of retailers into the hands of an outside body, noting:

> I read with interest your concerns about an inherent conflict between OLG as the seller of lottery products through retailers and OLG as the body currently providing oversight of these same retailers. I agree with you about the value of separating these functions, through the creation of a separate regulatory framework that provides for independent oversight. I also agree with you that an adjudicative process to deal with disputed and suspicious prize claims would significantly strengthen the system.

235 Most importantly, Minister Caplan commented that he has "taken to heart" our findings regarding the need to change the corporate culture at the OLG and is committed to working with the Board and the Corporation to make sure the problems outlined in my report are addressed. He also committed to consulting with my Office as the new framework for independent oversight of lottery retailers is developed. This is the kind of support and commitment on behalf of government which is essential if we are to move forward to restore integrity and trust in the lottery system. I commend the Minister and the government for its openness and responsiveness to my report and recommendations and for their immediate and resolute commitment to ensuring change.

236 Mr. Brown acknowledged that my report, though "painful" to read in light of the OLG failings detailed in it, was nonetheless accurate and fair in all respects. In the OLG's formal and contrite response to our recommendations, he wrote, along with OLG Chair Michael Gough: "We want to assure you that the OLG is committed to acting quickly to implement the recommendations in your report, including the recommendations made by KPMG, in order to better serve and protect Ontarians." They assured me that the argument that cultural change takes time will not be used an excuse for delay or failure, noting that:

> We acknowledge the important insights you have offered on our corporate culture and the conflicted nature of our dual role with retailers. We will put in place safeguards to ensure the integrity and honesty of the retailers who serve the lottery system. Your report provides the focused agenda needed to help drive positive cultural change....
>
> Finally, we would like to comment on your findings with respect to the level of service and protection we have offered our customers. There is no doubt we could and should have done better. We agree with your assessment of OLG's treatment of Mr. Edmonds. Our apology to him was long overdue and absolutely sincere....

237 The OLG advised that, at the direction of Minister Caplan, it is moving quickly to implement my recommendations. A copy of the OLG's status report on its progress is attached as the Appendix to this report.

238 Both the OLG's and the government's acceptance of the reality detailed in this report, along with a firm and true commitment to change, are required if OLG is to turn the corner and start down the long road of regaining public trust and confidence. I am happy to see that both the government and OLG appear to be headed in the right direction. I will be watching intently over the coming weeks and months, along with all Ontarians who place their trust in the lottery system, to gauge whether these commitments are translated into action, so that Ontario's lottery system can truly be one of integrity, worthy of winning the public's trust.

André Marin

Ombudsman of Ontario

Appendix

OLG's Self-Analysis of Response to Ombudsman's Recommendations

Submitted March 15, 2007

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
4	In order for real change to occur the Ontario Lottery and Gaming Corporation must strengthen and improve on its commitments to fulfill its obligations to the public and preserve the integrity of the lottery system by taking steps to prevent against retailer theft and fraud. Accordingly, I recommend that the OLG place on its website a public statement confirming its commitment to ensuring that it meets its duty of care to the citizens of Ontario to take all reasonable steps to ensure the integrity and honesty of the retailers that serve the lottery system.	OLG will place on its website a public statement confirming its commitment to take all reasonable steps to ensure the integrity and honesty of the retailers that serve the lottery system.	Implemented on Report release date.
5	The Corporation has expended more than $644,000 so far on the review being conducted by KPMG, and KPMG has made some 40 recommendations aimed at improving the Corporation's lottery process. These efforts should not be allowed to languish. Accordingly, I recommend that the Ontario Lottery and Gaming Corporation publish the results of the KPMG audit and move to review and implement the recommendations made by KPMG for improvement of its services.	The results of the KPMG audit will be published on OLG's website. A separate document outlining how OLG plans to implement the KPMG recommendations has been prepared.	See status report on the implementation of the KPMG recommendations.
6	I recommend the OLG establish an action plan and time frames for implementing KPMG's recommendations and make this available to the public.	Refer to KPMG Status Report.	Refer to KPMG Status Report.

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
7	I recommend the OLG designate a position within the organization separate from Sales and Services, at a senior level, with responsibility for review and implementation of the KPMG recommendations, and for ongoing review and implementation of initiatives focused on improvement of the security and integrity of the Corporation's lottery systems.	OLG Sr. Vice President, Business Operations (reporting to directly to Board) will be responsible for the ongoing review and reporting of the implementation of all the recommendations.	
8	In addition to reviewing and revising the Insider Win Policy as recommended by KPMG, to better define insiders, the Corporation should be ensuring that its retailer contracts clearly spell out the obligations relating to retailers and their employees when redeeming their own tickets. It should adopt a zero-tolerance policy when it comes to retailer dishonesty and retailer contracts should provide for automatic termination for dishonest conduct. Accordingly, I recommend that the OLG continue to treat retailers and their employees as insiders.	OLG has revised the retailer contract to reflect: a) that retailers and their employees will be subject to the OLG's Insider Win Policy b) that OLG has a zero-tolerance policy with respect to retailer dishonesty and dishonest conduct. c) that the contract will be terminated if a retailer is charged with a crime involving fraud, theft, misrepresentation, moral turpitude, or any game related offence. Policies referenced in the contract will provide an escalated approach to sanctions including termination and obligations relating to retailers and their employees when redeeming tickets over $10,000 and retailer requirements to properly train staff. In addition, OLG will record and track insider wins of between $1,000 and $9,999 to determine unusual win patterns or circumstances for investigation by Corporate Security and Surveillance.	Distribution of new retailer contract by June 30, 2007 supported by a communication program and ongoing communication after June 30, 2007

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
9	I recommend that the OLG amend its retailer contracts to specifically require that retailers identify themselves when redeeming their own tickets, and ensure that their employees are aware of this obligation.	Under the amended retailer contract, retailers will be required to identify themselves when claiming prizes of $1,000 or more.	Implemented by June 30, 2007
10	I recommend that the OLG make other insiders aware that they are responsible for identifying themselves when redeeming their own tickets through the Corporation's Prize Office.	A communication program to other insiders such as employees and supplier/vendor staff is being developed. This policy will apply to all OLG employees except those at OLG gaming sites and commercial casino staff. Employees who handle lottery tickets at gaming and commercial casinos however are included as insiders. In addition, the OLG Employee Code of Conduct which all staff attest to each year, will be updated to reflect that they understand their obligations under the new Insider Win Policy. OLG will also ensure that the employee orientation program includes the new Insider Win Policy. OLG will notify the relevant lottery suppliers/vendors of the new Insider Win Policy and as their contracts are implemented or renewed OLG will include specific clauses requiring compliance with the Insider Win Policy.	Implemented by June 30, 2007

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
11	I recommend that the OLG amend its retailer contracts to specifically require retailers to undertake to train their staff on the Corporation's requirements.	The OLG retailer contract has been amended to require retailer compliance with any OLG written instruction including retailer staff training requirements.	Complete
12	I recommend that the OLG amend its retailer contracts to make it clear that retailers are subject to a zero tolerance policy with respect to retailer dishonesty and to ensure that this is adhered to.	The revised OLG retailer contract has a zero-tolerance policy with respect to retailer dishonesty and dishonest conduct.	Complete
13	The corporation should be thoroughly reviewing not only the questions asked of winners suggested by KPMG, but also the methods of interviewing. I recommend that the Ontario Lottery and Gaming Corporation develop a more structured method of conducting Prize Office interviews and cease the practice of "hinting" to claimants about purchase and validation details.	OLG has developed new interview questions and Prize Office staff have been instructed to cease the practice of hinting to claimants about purchase and validation details. When the prize office staff determines that the major prize win is an insider, the Prize Office staff will terminate the interview immediately and the claim is escalated to Corporate Security and Surveillance to conduct the interview.	Implemented

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
14	I recommend that the Ontario Lottery and Gaming Corporation cease its practice of using its sales force staff to follow-up on compliance issues.	All OLG sales force staff will be instructed to forward all security related compliance issues to Corporate Security and Surveillance.	To be implemented by April 30, 2007
15	I recommend that the Ontario Lottery and Gaming Corporation instruct its sales force staff to direct security issues it identifies in the field to Corporate Security and Surveillance.	All OLG sales force staff will be instructed on directing security issues in the field to Corporate Security and Surveillance.	To be implemented by April 30, 2007
16	I recommend that the Ontario Lottery and Gaming Corporation record complaint information in a way that makes it possible to track complaints against individual retailers.	All complaints coming through our Customer Contact Centre, regarding retailers or their employees are being logged into our Customer Relationship Manager tool (ONYX) and escalated to Corporate Security and Surveillance as applicable.	Complete

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
17	I recommend that the Ontario Lottery and Gaming Corporation consider implementing technological changes to ensure that it has an integrated complaint database and the capacity to automatically populate data files to allow for cross-referencing of information.	Technological solutions are being investigated to integrate all complaint database systems to enable cross-referencing of information.	Recommendation by June 30, 2007
18	In addition to KPMG's recommendations around documenting the investigative process, I believe that the Corporation's investigations require more rigor. Accordingly, I recommend that the Ontario Lottery and Gaming Corporation ensure that its investigators are trained in and follow proper investigative record-keeping practices, including keeping contemporaneous notes, not altering entries and not destroying investigative notes.	Training has been arranged through the Ontario Police College. Investigators are being enrolled in the OPC's General Investigation Training Course and Forensic Interviewing Course. In addition, arrangements are being made for investigators to attend training offered by the Ministry of Labour's Inspections, Investigations & Enforcement Secretariat. Course outlines attached.	Training courses have been booked and training will be complete by September 30, 2007.
19	I recommend that the OLG ensure that all complaints relating to retailer misconduct are referred for investigation to the Corporate Security and Surveillance Division.	Sales, Contact Center and Prize Office staff have been directed to refer all complaints relating to retailer misconduct to the Corporate Security and Surveillance for investigation.	Implemented

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
20	The Corporation has not kept statistical records of insiders and analyzed these to determine if there are signs that retailers or other insiders are winning prizes in a disproportionate amount. Such analysis could serve as a useful tool in identifying areas that require closer security supervision. Accordingly, I recommend that the OLG keep and analyze statistical information on the number of insiders winnings its various lottery products, the playing habits of insiders, and on the win history of individual insiders.	OLG will develop a solution to maintain and analyze statistical information about insiders to determine unusual win patterns or circumstances for investigation by Corporate Security and Surveillance.	Recommendation by April 30, 2007.
21	I recommend that the Ontario Lottery and Gaming Corporation explore methods of gathering more accurate information concerning insiders, including surveys and requirements that insiders, such as retailers, regularly identify the names of their employees to the Corporation.	The search process for detecting potential "Insider Wins" has been enhanced using all currently available electronic databases. OLG will expand, update and keep current to the best extent possible its' insider win databases.	Complete and Ongoing
22	The Ontario Lottery and Gaming Corporation should ensure that prize claimants are checked against the Corporation's records of insiders and that individual win history is consulted whenever an insider winner makes a claim for payment through the Corporation.	All prize claimants of $1,000 and above are checked against available records of insider wins. Corporate Security and Surveillance will consult individual win history for all insider win investigations through an enhanced insider win database.	Complete Ongoing

Status of OLG Action In Response to Ombudsman Recommendations

#	Ombudsman Recommendation	OLG Action	Implementation Status
23	I recommend that the OLG report to the Ombudsman in writing on a quarterly basis on its progress implementing these recommendations, until such time as all of the recommendations have been successfully implemented.	Agreed.	1st Status Report - June 28, 2007 2nd Status Report - Sept. 27, 2007 3rd Status Report - Dec. 21, 2007 4rth Status Report - March 27, 2008

KPMG STATUS REPORT

	# of KPMG Recommendations	OLG Actions in Response To Reco's	Actions Completed	# of Actions to be Completed By:			Actions To be Investigated:		
				May 31st	June 30th	Beyond June 30th	By May 31st	By June 30th	Beyond June 30th
Phase I	5	11	6	1	2	1	0	0	1
Phase II	18	60	33	7	11	3	0	1	5
Phase III	17	67	14	27	1	1	1	2	21
Grand Total	40	138	53	35	14	5	1	3	27

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